

No. 16418

United States
Court of Appeals
for the Ninth Circuit

REX L. NEELY, Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

In Two Volumes

VOLUME II.

(Pages 241 to 510, Inc.)

Appeal from the United States District Court
for the District of Arizona

FILED

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Appeal from the United States District Court
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Afternoon Session

Thursday, September 11, 1958

Two O'Clock P.M.

Court resumed pursuant to recess.

Present: The same as before.

The Court: You may continue.

LLOYD N. JOHNSON

resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Holohan): Now, I will hand you what has been marked 24 for identification. Would you examine that document, please.

Are you familiar with it?

A. Yes, sir.

Q. By whom was it prepared?

A. I prepared this as a statement for Mr. Neely.

Q. All right. Without going into the actual contents of the document, what is it?

A. It is a summarization of the substance of my conversations with Mr. Neely concerning the matters about which we [249] spoke this morning.

Q. All right. Now, was that ever given or shown to the Defendant?

A. Yes. Mr. Neely read this statement, and we discussed the contents of it.

Q. And when did he read it?

A. It was on or about March 24, the date of the statement. I wouldn't say that was the exact date, but it was very close.

(Testimony of Lloyd N. Johnson.)

Q. Did he take any action with regard to the physical statement itself?

A. Yes, we went over it, and after he read it, he had certain changes, or I should say deletions to make in portions of the statement, which he did.

Q. And did he make such deletions on the statement, Government's Exhibit 24 for identification?

A. At Mr. Neely's request, I ruled out certain parts of sentences, or sentences, which changes he initialed at the time we made the deletions.

Q. Now, did he indicate that the contents of the statement as deleted was correct?

A. Yes. As far as it was, after these changes which he suggested, why, he indicated that that was substantially correct.

Q. Now, did he sign the document?

A. No, he didn't sign the document itself. [250]

Q. What happened concerning that?

A. Well, after reading it over and making the certain changes or deletions, he said he would like to think it over for a time before signing it.

Q. All right, what was the understanding then about the period in between?

A. The understanding then was that we should meet a day or two later. I think it was two days later, at some time we would again discuss the matter of signing the statement.

Q. And thereafter did you meet with the Defendant?

A. Yes, I think it was two days later I met Mr.

(Testimony of Lloyd N. Johnson.)

Neely by appointment, or prearrangement, and at that time he asked me if I had a copy of the statement, which I didn't have, and at that time he said that he would like to show it to an attorney before he affixed his signature to it.

Q. All right. Was anything further done?

A. I told Mr. Neely I would have to consult Mr. Hays regarding this, which I did, and Mr. Hays said to just let it go.

Mr. Holohan: At this time the Government offers in evidence Government's Exhibit 24 for identification as Government's Exhibit 24.

Mr. Whitney: May I ask a question on voir dire, if the Court please?

The Court: You may. [251]

Q. (By Mr. Whitney): Mr. Johnson, this statement was prepared by you? A. Yes, sir.

Q. And it is supposed to be some kind of a condensation of a longwinded tape recording lasting about five hours?

A. That plus some other interviews I had with Mr. Neely, yes.

Q. And when was that tape recording taken?

A. Well, the tape recordings were taken on I think two occasions, in March, possibly, in February and March.

Q. Now, this particular document I notice is dated March 24, 1957. A. Yes.

Q. The tape recording was taken sometime before that? A. That is correct.

(Testimony of Lloyd N. Johnson.)

Q. And this was written up subsequent to March 24, 1957? A. Subsequent to March 24th?

Q. Yes. In other words, as I remember, these tape recordings were taken on the 22nd and 24th of March.

A. I don't remember any specific dates, but I don't remember a March 24th date for a tape recording.

Q. Anyway, when you made this up, it was probably dated back to the 24th of March?

A. No, that date, Mr. Whitney, may have been the date that I actually wrote the statement, but maybe not the date [252] that I talked to Mr. Neely about them. There may have been one day in there, a one-day lag. I don't know. I don't know about those specific dates.

Q. And he inquired of you about getting a copy to see a lawyer? A. Yes, sir.

Q. To show to a lawyer? A. Yes, sir.

Q. And you didn't give him a copy?

A. I didn't, no, sir.

Mr. Whitney: I don't think there is any objection to this, if you want to use it.

Mr. Stanfield: On behalf of the Defendant Short, the same objection is interposed as heretofore made on the other Statement.

The Court: All right. The record will show the objection. It may be received.

The Clerk: Government's Exhibit 24 in evidence.

(Testimony of Lloyd N. Johnson.)

(Said Statement of Rex L. Neely was received in evidence and marked as Government's Exhibit 24.)

Q. (By Mr. Holohan): On this matter of tape recordings and statements that you have had reference to, this wasn't all one session that these interviews that we have had reference to were taken? A. No. [253]

Q. There were a number of interviews over a period of time? A. That is right.

Q. Your first meeting was in January of 1957?

A. That is right, the latter part of January of 1957.

Q. That was the meeting of the office, and then there was the meeting at the home where this first preliminary statement was taken?

A. Correct.

Q. And from time to time as you delved into records, and interviewed others, you would **contact** the Defendant again?

A. That is substantially correct, yes, sir.

Q. There were times that he asked that he be given time for him to check records of his own?

A. Well, I think so, on an occasion or two, yes.

Q. Now, with regard again to the ACP payment on the A to B ditch up there in 1954, the one that was finished in March, and the application covers in May of that year; was the Defendant confronted with the fact that the ditch had already been completed at the time the application was made?

(Testimony of Lloyd N. Johnson.)

A. Yes. And I asked Mr. Neely at the time if he didn't know that a request for assistance had to be made prior to starting an ACP——

Mr. Whitney: Was that in this statement, Mr. Johnson? [254]

The Witness: I think so.

Mr. Whitney: The statement is there.

The Witness: I don't know whether it is in that detail.

Q. (By Mr. Holohan): Will you go on? I haven't heard the objection.

A. And Mr. Neely said that he didn't know at that time that it was necessary to request before starting the practice.

Mr. Holohan: You may cross examine this witness.

Cross Examination

Q. (By Mr. Whitney): Mr. Johnson, how long have you been with the Department of Agriculture? Quite a length of time, haven't you?

A. About 16 years, yes, sir.

Q. What has been your duties during that period of time?

A. I have been engaged in investigating various irregularities of the Department's programs, and doing review work in our Headquarters Office.

Q. Has it had mostly to do with cotton or other crops?

A. No, sir, this is the first cotton matter I have worked in.

(Testimony of Lloyd N. Johnson.)

Q. Now, during all of your conversation with Mr. Neely, he fully cooperated with you? [255]

A. Yes, he was cooperative.

Q. And he had no lawyer?

A. He didn't have an attorney, as far as I knew.

Q. And the only time that he asked for a lawyer is when you tried to get this last statement, Government's Exhibit 24?

A. That is the first time he said that he would like to see—at least he mentioned to me he would like to see a lawyer.

Q. Now, had he ever indicated to you in this statement, or in the tape recording, or at any other time that he ever thought there was no such a thing as the Burns farm?

A. No. I asked Mr. Neely that question on a number of occasions, and he said that——

Q. That he honestly thought there was a Burns farm? A. Well, he said that he——

Q. And that he honestly thought that he got these additional allotments for 1954, 1955, and 1956, open and above board?

A. Mr. Neely said he didn't know that there wasn't a Burns farm.

Q. He never indicated to you that he knew anything about this until sometime in the latter part of December, 1956?

A. That's when he said that he——

Q. Learned for the first time?

A. He suspected for the first time that there was [256] something wrong.

(Testimony of Lloyd N. Johnson.)

Q. That's right. Did he tell you that he fully relied on that office? A. Yes, sir.

Q. And that he fully relied upon the statements that were made by Mr. Short? A. Yes, sir.

Q. Now, in connection with the 1954 matter which Mr. Kennedy has straightened out in pretty good shape, did he tell you that he first gave Short a check, and had payment stopped on it until such time as he got a written lease? A. No, sir.

Q. He didn't tell you that?

A. He didn't say that.

Q. But he did say in this statement to you that, "I gave him a check to cover the 81 acres, although, as will be set out later, I am not sure it was the above-mentioned check dated April 5, 1954."

A. Yes, he said that, but he didn't mention a lease in that connection, waiting to get a lease.

Q. But he had gotten the lease on April 5th, 1954?

A. March 30 was the date of the lease.

Q. I understand, but the date of the check?

A. I see what you mean. Yes, sir.

Q. The date of the check, April 5, 1954? [257]

A. Yes, sir.

Q. He didn't tell you that he had issued a prior check dated March 20th, 1954, for the same amount, \$1,620?

A. No, sir. The story there was that he had stopped payment on a check.

Q. That's right.

A. And we were never able to find such a check,

(Testimony of Lloyd N. Johnson.)

and Mr. Neely could never clairfy, first, whether the check that was actually processed by Mr. Short, or taken by him, was the original check, or a later one.

Q. You know Mr. Short's signature?

A. Well, I have seen it on a number of documents, yes.

Q. Referring, Mr. Johnson, to Defendant's Exhibit M for identification, would you say that was Mr. Short's signature?

A. From my experience in examining documents said to have been signed by Mr. Short, I would say that looks like his handwriting.

Q. And that check was dated March 20, 1954?

A. Yes.

Q. Payable to Joe Short, \$1,620?

A. That appears to be correct, yes.

Q. Signed by Rex L. Neely? A. Yes.

Q. And the payment stopped? [258]

A. Yes.

Q. According to the advice of the bank?

A. What was the date of that again, sir?

Q. March 20th? A. Yes.

Q. Now, then, he issued another check on April 5th, 1954, for \$1,620. A. Yes.

Q. And that is after the time that he got this lease from Mr. Short, the Burns lease, or let us say the so-called Burns lease?

A. Yes, it is dated subsequent to the date of the lease.

Q. That's right. Mr. Neely, of course, never

(Testimony of Lloyd N. Johnson.)

called your attention to this first check on which payment was stopped?

A. No, sir, we asked Mr. Neely about that a number of times about just what had happened, but he didn't seem to be able to recall.

Q. He didn't have his checks, did he?

A. No, sir. At least he didn't produce the check. I don't know whether he had it or not.

Q. You never saw this, I assume, either? (Handing document to witness.)

A. Is this the sublease?

Q. Yes. [259]

A. No, sir, I have never seen that before today.

Q. That is supposedly a sublease from Neely back to Burns for that same property.

“Lessee has the right to plant any crop——”

Mr. Holohan: We object to his reading that to the Jury without its having been introduced, or any foundation shown for its admission.

The Court: All right.

Q. (By Mr. Whitney): Now, this statement, Government's Exhibit 24, of Mr. Neely, is substantially what he said during all of these conversations, condensed? A. That's right, sir.

Q. Condensed by you? A. Yes.

Q. And afterwards examined by Mr. Neely, but which he declined to sign until he could show a copy to his lawyer? A. Yes, sir.

Q. Did he say who his lawyer was?

A. No, sir.

(Testimony of Lloyd N. Johnson.)

Q. Now, do you believe what Mr. Neely said in this statement?

Mr. Holohan: I object to that as expressing an opinion that is the Jury's function.

The Court: He doesn't have to answer that.

Q. (By Mr. Whitney): He never inferred that any of these [260] checks that he gave Short were for anything except the cotton allotments which he got by virtue of the so-called Burns lease, isn't that right?

A. I think that is correct, sir, except the last check.

Q. The what?

A. The last check which contained an additional amount.

Q. I understand. And as you stated before, he said that he thought probably that allotment was worth more, and Mrs. Short was to be hospitalized, and he put in \$250 additional for Short?

A. That's right, sir.

Q. You noticed on that endorsement on the first Short check dated March 20th, 1954, "for deposit only, Joe Short business account."

A. I see it now, sir.

Q. Have you ever had occasion to examine Mr. Short's business account?

A. No, sir, I have never examined his bank or banking records at all.

Q. Now, Mr. Johnson, you know that cotton allotments were so dealt in in Pinal County and in Maricopa County in 1954, that is, if the farmer had

(Testimony of Lloyd N. Johnson.)

some land that had a cotton history, and he didn't have water enough to handle it, that he could sell his allotment, there was nothing illegal in that? [261]

A. If he went through the proper procedure.

Q. In 1954? A. In 1954, that's right.

Q. In 1955, the same thing?

A. If he had a reconstitution of his farm with the farm he leased?

Q. And in 1956 the same?

A. I think so, to the best of my understanding.

Q. And that obtained not only in Pinal County, but in Maricopa County?

A. The reconstitution, combining of farms, transferring?

Q. Yes. A. Yes.

Q. And the sale of cotton allotments?

A. Well, there would be a consideration in connection with such an arrangement.

Q. Nothing illegal about that?

A. If I understand your question fully, no, sir, as far as I understand the regulations.

Q. Do you know whether any overplant notices were sent to Mr. Neely during the year 1954?

A. I don't know of any sent to him in 1954, no, sir.

Q. And the fact of the matter is his cotton allotment was 408—— A. 400.8. [262]

Q. 400.8, pardon me. And if the Burns lease was a bona fide lease, that would be within his cotton allotment?

A. Under those circumstances, yes.

(Testimony of Lloyd N. Johnson.)

Q. That's right. That is, he planted less acreage than that in 1953? A. Yes, sir.

Q. In 1955 he overplanted? A. Yes, sir.

Q. After considering the extra acreage he got?

A. Yes, sir.

Q. How much? A. About 50 acres.

Q. About 50 acres? A. Yes.

Q. You heard the testimony here that some was destroyed. Do you know how much?

A. Mr. Neely told me he had destroyed 15 acres.

Q. And he told you he thought that was sufficient to bring it within compliance, did he not?

A. That's right.

Q. Now, in 1956, there was no cotton destroyed on the Neely place in Pinal County?

A. That's right.

Q. On Farm 647?

A. Yes, sir, that is right. [263]

Q. And you have heard the testimony of the other witnesses here that they have computed his penalty, but did not send it out, because it had been stopped by the State Office, or maybe some of your officials? A. I heard that, yes.

Q. Did you have anything to do with stopping it? A. No, sir.

Q. Do you know who did?

A. No, sir. I know nothing about that matter at all.

Mr. Whitney: I think that's all. I beg your pardon. I forgot one thing.

(Testimony of Lloyd N. Johnson.)

Now, on these ACP forms, when was the time to apply for the 1954 practices?

A. I couldn't be too sure on this, sir. I think there was a period in the fall of 1953 when you could apply for a 1954 practice. I don't remember the period, whether it was the month of December, or just when it was.

Q. And if he made application, then, in the fall of 1953, and didn't get paid for the 1954 until later, there would be nothing illegal about that, would there?

A. I am afraid I don't quite understand you, Mr. Whitney.

Q. Well, assuming that he made application.

A. Yes.

Q. On November 2nd, 1953. A. Yes, sir.

Q. And if he didn't get paid for that practice until later, did the work in March, 1954, or prior to March, between January and March, 1954, and didn't get paid for that until a later date, there would be nothing wrong about that, would there?

A. I am sorry, I don't know. There are certain dates in there that must be complied with, and I am not competent at this moment to say what they are. There are certain periods in which they have to do certain things.

Q. Referring to Defendant's Exhibit G for identification, what does that purport to be?

A. This is a form 201, which is a request for assistance on concrete ditch lining, dated November 2, 1953.

(Testimony of Lloyd N. Johnson.)

Q. And this Defendant's Exhibit H?

A. Well, that appears to be an original of the 247 which goes to the producer, dated November 5, 1953.

Q. Now, if the producer did that work between January and March, 1954, he would have complied with this situation, wouldn't he?

A. It would be my understanding that if he met all of the technical requirements for inspection by Soil Conservation.

Q. In other words, there is considerable technicalities in connection with that matter?

A. There are some, yes, sir. [265]

Q. Now, you don't mean to infer to the Jury here that he collected for two practices in 1954?

A. He received two checks in 1954.

Q. From the Pinal County——

A. For ACP practices.

Q. In Pinal County?

A. Yes. He received the payments in 1954. That's what I mean to say.

Q. But they weren't for 1954 practices?

A. No. One was a 1953 practice.

Q. And the other a '54? A. Yes, sir.

Q. Is there anything illegal about that?

A. If everything else is legal, there is nothing illegal about receiving two checks in one year, I guess.

Mr. Whitney: That's all.

(Testimony of Lloyd N. Johnson.)

Redirect Examination

Q. (By Mr. Holohan): This payment in early 1954, was that for this ditch practice, D to F, and B to C? A. That's right.

Q. And the subsequent payment later in the year 1954 was for this practice A to B? A. Yes.

Q. This ditch was already completed, A to B, before any application was ever made for it?

A. Mr. Neely said that that ditch was in in February or March, 1954.

Q. All right. Now, if I might, on one other point touched by counsel, the term "sale of allotments" was used. And you made reference to "re-constitution."

In order in Maricopa and in Pinal Counties, in order for a farmer in 1955 and 1956 to secure additional allotment, that is, his neighbor's, what was required there, just basically?

A. Well, it was basically a lease, or acquisition by owner of other farming land, which had on it a cotton allotment, if he was interested in the allotment, and those two tracts were combined in the ASC office for purposes of farming and operating the tracts as one operation.

Q. And by that means, then, the cotton history and cotton allotment for the current year for the acquired farm then passed to the, you might say the home place or main farm?

A. Well, to the one who leased the additional tract.

Q. All right. Then he had the option of plant-

(Testimony of Lloyd N. Johnson.)

ing it on his own place, or on the lease, or any combination thereof? A. That is correct.

Q. There was actually, each one of these farms is actually given a number, is it not? [267]

A. Each farm has a number, and on combination, one number is given to both tracts.

Q. And generally which number was given?

A. I don't know technically. I think it was the—oh, I don't know.

Q. Was there any action by the County Committee required then?

A. Yes, these combinations or reconstitutions had to be approved by the county committee.

Mr. Whitney: And by the State Committee?

The Witness: That I don't know, sir. I am not sure on that.

Mr. Holohan: That's all I have of you, Mr. Johnson.

Recross Examination

Q. (By Mr. Whitney): All of these matters in the Pinal County Office were eventually approved by the State Committee? A. No, sir.

Q. You don't know that? A. No, sir.

Q. Did your investigation show they were not?

A. My investigation didn't cover that.

Q. You wouldn't know that? A. No, sir.

Q. Are you a lawyer?

A. Not a practicing attorney, no, sir.

Q. Pardon?

A. Not a practicing attorney, no.

(Testimony of Lloyd N. Johnson.)

Q. But you studied law? A. Yes, sir.

Q. You know that a lease in Arizona for a year or less doesn't have to be in writing?

Mr. Holohan: I object to this. This is a matter of law.

The Court: Maybe he isn't an Arizona lawyer.

Mr. Whitney: That's all.

Mr. Stanfield: No questions.

(Witness excused.)

Mr. Hays: Mr. Dunkin, please.

DOYLE L. DUNKIN

called as a witness in behalf of the Government,
having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Hays): Will you state your name, please. A. Doyle L. Dunkin, D-u-n-k-i-n.

Q. By whom are you employed, and in what capacity?

A. I am employed by the United States Department of Interior, Bureau of Indian Affairs, Supervising Highway Engineer.

Q. Were you ever employed in the Pinal County area by that same service?

A. Yes, sir, by the Gila -River-Pima-Maricopa Indian Agency, at Sacaton, Arizona.

Q. And when was that?

A. From 1952——

Q. Just approximately.

(Testimony of Doyle L. Dunkin.)

A. 1953, and I believe until September of 1954.

Q. Until September of 1954? A. Yes.

Q. And what were your duties down there?

A. Soil conservation, soil conservation engineer.

Q. You were a soil conservationist concerning what land?

A. Indian land of the Gila River-Pima-Mari-copa Indian Reservation, and the three other reservations under that jurisdiction.

Q. Were you concerned with any other than Indian land? A. No, sir.

Q. Do you know the Defendant Joe Short?

A. Yes, sir.

Q. Had you had dealings with him in the line of your work? [270] A. Yes, sir, I had.

Q. And what would that dealing be? What would your contact be?

A. The contact was one in which I, as a soil conservationist with the Indian Service, was interested in seeing some of our Indian farmers obtain PMA benefits with, or when they were entitled to it.

Q. That would be through the ASC Office?

A. Yes, sir.

Q. I will hand you Government's Exhibits D and E, 12-D and E. Let us take one at a time.

I will hand you Government's Exhibit 12-D, and ask you to examine that document, and calling your special attention to a written signature toward the bottom, and ask you if you have ever seen that before.

(Testimony of Doyle L. Dunkin.)

A. I can't say if I have seen this exact paper or not.

Q. Have you ever seen that writing there before?

A. If this is the same paper that Mr. Johnson showed me the first time he contacted me in Nevada, I have seen it.

Q. Is that your signature? A. No, sir.

Q. I hand you Government's Exhibit 12-E, and ask you to note the signature at the bottom of that document, that purports to be Doyle H. Dunkin. Is that your signature? A. No, sir. [271]

Q. What is your full name again?

A. Doyle Linden Dunkin.

Q. It isn't "H", it is "L", the middle initial, is that correct? A. Right.

Mr. Hays: That is all.

Cross Examination

Q. (By Mr. Whitney): Mr. Dunkin, do you know who signed these? A. No, sir, I don't.

Q. Do you know Mr. Neely?

A. I have been trying to——

Q. Pardon me? A. I can't say for sure.

Q. This is the gentleman sitting here.

A. Yes, sir. I knew who he was, now.

Q. Did you ever see him in 1954, 1955, and 1956 on business of any kind?

A. Not that I know of, sir, no, sir.

Q. He doesn't farm in the Indian reservation, that you know of?

A. Not that I know of, sir.

(Testimony of Doyle L. Dunkin.)

Q. And you don't know anything about these at all? A. No, sir. [272]

Mr. Whitney: That is all.

Mr. Stanfield: I don't think we have any questions.

Mr. Hays: That is all.

(Witness excused.)

Mr. Hays: May this witness be permanently excused?

Mr. Stanfield: No objection.

Mr. Whitney: No objection.

Mr. Hays: The Government rests, your Honor.

The Court: The Government rests.

Mr. Whitney: I would like to have the Jury excused.

The Court: All right. You may be excused from the Courtroom.

(The Jury retired from the courtroom.)

(The following proceedings were had out of the hearing and presence of the Jury.)

The Court: You may proceed.

Mr. Whitney: If the Court please, the Defendant Neely now makes a formal motion for a judgment of acquittal on each and every count in the indictment, on the grounds that the evidence is insufficient to show beyond a reasonable doubt, or at all, anything that would support a verdict of guilty.

Now, first, I want to call your Honor's attention [273] to Counts VII, VIII, IX, X, and XII, that is, the aiding and abetting count.

On those particular counts, if the Court pleases,

I don't know of any evidence in this record that would show that the Defendant Neely aided, abetted, or induced Short to do any of the acts charged in those particular counts.

And that, if the Court pleases, would also apply to the conspiracy count.

There is no sufficient evidence, even taking so-called overt acts that would in any way show an agreement, by inference even, between Short and Neely.

Insofar as Neely is concerned, on those particular counts, beginning with Count VII, clear through to Count XII, there is no evidence to support those counts, in my judgment.

Now, as to the first counts, if the Court pleases, Counts I, III, and V, that is, the charges that Neely paid a bribe to Short in the amounts of \$1620, \$1410, and \$1750, there is not the slightest evidence here that that took place, on the statement of Short that is in evidence here, and on the statement of Neely that the Government put in evidence.

There is not any evidence at all on that situation. Short completely exonerates him. And in this statement, which is quite a lengthy statement, but this is the nub of it, it says:

"During each of the three crop seasons mentioned [274] above, I accepted money from cotton producers in exchange for obtaining additional cotton allotments for them. I led these producers to believe that I obtained such allotments either from my own farm or through a deal with other producers who had allotments which were unplanted. They trusted

me, and, as far as I know, they believed my representations."

Neely's statement is to the same effect, and if you take both statements out, there is no evidence at all to support a charge of bribery, to say nothing of these aiding and abetting charges, and to say nothing of the conspiracy charges.

I honestly believe that this Court should direct a verdict, or, rather, should enter a judgment of acquittal on each of the counts in these indictments, and particularly do I say that with reference to all the counts, commencing with Counts VII, or Count VII, which has to do with the aiding and abetting, and Count XII, the conspiracy.

There is no evidence in those, if the Court pleases, that the Jury could even infer beyond a reasonable doubt that Neely is guilty of anything in connection with those particular counts.

The Court: Motion denied.

We will have our afternoon recess at this time.

(The afternoon recess was taken.) [275]

(The following proceedings were had in the hearing and presence of the Jury.)

The Court: You may continue.

Did you wish to make an opening statement, Mr. Whitney?

Mr. Whitney: Yes.

(Thereupon Counsel for the Defendant Neely made his Opening Statement to the Jury.)

The Court: Mr. Stanfield, do you wish to make an opening statement?

Mr. Stanfield: The Defendant Short waives his opening statement.

The Court: All right.

Mr. Whitney: Mr. Neely, will you be sworn, please.

(Thereupon the Defendant Rex L. Neely was sworn as a witness.)

Mr. Whitney: Ladies and Gentlemen, as I told you, I am going to present to you the statements before Mr. Neely testifies.

These statements are all in evidence here as Defendant's Exhibit "J," Government's Exhibit 25, and Government's Exhibit 24.

I will read them in the order in which they are given, not by whom.

The first is Statement of Joe L. Short, which was [276] identified by Mr. Kennedy, which was signed by Joe L. Short, apparently, and witnessed by Mr. W. A. Stanfield, Mr. Short's attorney; by Reed S. Cardon, and by Doyle S. Kennedy, Special Agents, United States Department of Agriculture, 1000 Geary Street, Room 101, San Francisco, California.

This Statement is dated at Eloy, Arizona, January 14, 1957.

(Thereupon Defendant's Exhibit J in evidence, the Statement of Joe L. Short, was read to the Jury by Mr. Whitney.)

Mr. Whitney: Of course, he has got round figures in there, and we have already shown what they are.

Now, the next Statement in point of date is on

January 22nd, 1957, which was following a conversation at Mr. Neely's house, I believe.

It is headed "Candler, Arizona, January 22, 1957." This is in the handwriting, by the way, of the agent.

(Thereupon Government's Exhibit 25 in evidence, Statement of Rex L. Neely, was read by Mr. Whitney to the Jury.)

Now, the last statement in point of time which is introduced here as Government's Exhibit 24, which is the last statement taken from Rex L. Neely, which is a condensation [277] prepared by Mr. Johnson from a long-winded conversation, or long-winded conversations held over a tape recorder, which I think he said would take five hours to play.

This is dated at Chandler, Arizona, March 24, 1957.

(Thereupon Government's Exhibit 24 in evidence, Statement of Rex L. Neely, was read by Mr. Whitney to the Jury.)

Mr. Whitney: This statement is neither signed nor witnessed.

REX L. NEELY

the Defendant herein, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Whitney): Your name is Rex L. Neely?
A. Yes, sir.

(Testimony of Rex L. Neely.)

Q. And you are one of the Defendants in this action? A. Yes, sir.

Q. Where do you reside, Mr. Neely?

A. 699 North Washington, Chandler, Arizona.

Q. How long have you resided in this county?

A. All my life.

Q. How old are you? A. Thirty-three.

Q. I suppose you are a family man?

A. Yes, sir, three children.

Q. When did you first meet Joe L. Short?

A. It was in the ASC Office. Nineteen——

Q. In Casa Grande?

A. Yes, in Casa Grande. In 1954, I believe.

Q. And prior to the time of the transactions you had with him, were you acquainted with him at all any to speak of? A. No, sir, I was not.

Q. How many times had you seen him prior to that time?

A. Not over once or twice, probably once.

Q. Now, in 1953, there was no restrictions on cotton, is that right? A. That is right.

Q. In 1954, the restrictions went on?

A. Yes, sir.

Q. And at that time, did you make inquiry about getting some additional cotton allotments?

A. Yes, I did.

Q. And who did you make that inquiry of?

A. Well, it kind of came to me, I mean, in a round about way. I was there at the ranch, and an acquaintance of mine [279] that I knew when I lived in Gilbert and Chandler, Mike Watson, came

(Testimony of Rex L. Neely.)

by and we got to talking, and I told him that I was looking for a place to lease, to get some cotton.

Q. Looking for additional acres?

A. Additional cotton acres to put on my farm.

Q. And what did he say to you?

A. He told me——

Q. Not what he said to you, but did he refer you to anybody?

A. I believe the name Bill Burns was mentioned.

Q. And what else did he say?

A. And that I was to contact Mr. Short at the ASC Office for further information on the farm.

Q. Did Mr. Watson indicate to you in any way that there was anything wrong with Mr. Short?

A. No, sir.

Q. And you contacted Mr. Short?

A. I called him at the office to see if the allotment was still available.

Q. What did you say? You called him on the telephone? A. Yes, sir.

Q. When was that?

A. That was shortly after I talked to Mr. Watson. He indicated that it was still available, and that he would check to make sure, that I was to contact him later in regards to [280] the allotment.

Q. That was sometime prior to the 20th of March, 1954? A. Yes, sir.

Q. You did contact him later?

A. I did by phone.

Q. And do you remember the date?

(Testimony of Rex L. Neely.)

A. I believe it was along the middle of March, I believe.

Q. Was it prior to the time that you gave him a check for \$1,620? A. Yes, it was.

Q. Referring to Defendant's Exhibit M for identification, Mr. Neely, was it prior to the date of that check, which is March 20, 1954? A. It was.

Q. And when did he let you know that he could get you some additional acreage with reference to that date?

A. I believe it was around the 18th or 19th.

Q. And then did you go to see Mr. Short?

A. I did.

Q. And at that time, what took place?

A. He stated that he had contacted Mr. Burns, that he was handling—he stated that this farm didn't have sufficient water for the cotton allotment on it. Therefore, Mr. Burns had released the acreage for him to take care of, to re—— [281]

Q. Did he say how much that acreage was to be released, how much of it was to be released?

A. It was 80.1. 80 acres, approximately.

Q. Or 81 acres maybe? A. Yes.

Q. And at that time, that was on the 20th of March, was it? A. Yes.

Q. At that time, did you give Mr. Short this check? A. I did.

Q. And do you know Mr. Short's endorsement?

A. I have seen it. That is his signature.

Mr. Whitney: We offer this in evidence, if the Court please.

(Testimony of Rex L. Neely.)

Mr. Holohan: We object to it on foundation not having been laid for the entire document yet. I note besides the check, there is another document attached to it, for which there has been no foundation laid, as I understand it.

Mr. Whitney: If you get that technical, I will lay it.

The Court: Is that the notice from the bank?

Q. (By Mr. Whitney): When you stopped payment on this check, did you get this notice from the bank afterwards? A. Yes.

Q. And was that attached to the check? [282]

A. Yes, sir.

Q. That showed that payment was stopped, "Returned Unpaid" A. Yes.

Mr. Whitney: Is that all right, Mr. Holohan?

Mr. Holohan: No objection now.

The Court: It may be received.

The Clerk: Defendant's Exhibit M in evidence.

(Said Check and Advice of Stop Payment was received in evidence and marked as Defendant's Exhibit M.)

Q. (By Mr. Whitney): Now, after you gave Defendant's Exhibit M in evidence, this check dated March 20, 1954, for \$1,620, how did you come to stop payment on that check?

A. As I understood it, through the transferring of cotton allotment from one farm to the other, it was necessary for a farmer to get a lease from the other farm, or farmer.

(Testimony of Rex L. Neely.)

Q. From somebody. Who told you that, do you remember? A. Mr. Watson told me that.

Q. And did you discuss that with anyone else?

A. Yes, sir, I discussed it with Mr. Asher at my bank.

Q. Mr. Asher is the manager of the Mesa Bank?

A. The Mesa Valley National Bank.

Q. Valley National Bank of Mesa?

A. Yes.

Q. And what did Mr. Asher say? [283]

A. I went up there to the bank to give a reason why I stopped payment on the check, and telling him the situation. And I told him that I was going to request a lease from the farm, and that when I did, that I would let him know, or re-issue another check.

Q. I see.

A. He indicated that if I had a lease, that in his opinion it would be all right.

Q. After that check and that payment was stopped, did you see Mr. Short again?

A. Yes.

Q. When with relation to this date of March 20th?

A. I believe it was the 22nd or 23rd.

Q. And what did he say, and what did you say, to Mr. Short?

Who was present?

A. Mr. Short and myself.

Q. All right. And where did this conversation take place?

(Testimony of Rex L. Neely.)

A. At 11-mile Corner, there at the front of a grocery store.

Q. And what did you say to Mr. Short?

A. Well, I told him that I wanted a lease on the Burns farm, that I understood that is the way allotment could be transferred. [284]

Q. What did he say?

A. He said that he would get in contact with Mr. Burns, and get a lease from him.

Q. Was that about all the conversation then?

A. He told me that, well, I questioned him about this lease, and he indicated to me that he would get a lease, and it was all right.

Q. And then when did you see Mr. Short again?

A. At the ASC Office, I believe in April.

Q. You say sometime early in March?

A. Early in April.

Q. I mean early in April. A. Yes.

Q. Referring you to Government's Exhibit 15 in evidence, is that the lease that he gave you?

A. It is.

Q. And that is the one that you turned over voluntarily to the Government Agents, Mr. Johnson and Mr. Kennedy, or one of them?

A. Yes, sir.

Q. And that lease is signed by, purportedly, by W. R. Burns? A. Correct.

Q. And was signed at the time you got it?

A. Yes, it was. [285]

(Testimony of Rex L. Neely.)

Q. And then you signed it? A. Yes, sir.

Q. Do you remember Mr. Short witnessing your signature? A. Yes, sir.

Q. And do you remember that this Lena H. Andrews was on there witnessing Mr. Burns' signature?

A. I believe it was. I am almost certain it was.

Q. Anyway, when you got the lease, it was on there? A. Yes.

Q. That is the lease that you received?

A. Yes.

Q. At that time, that was early in March. You gave him a check the same day? A. Yes, sir.

Q. I am handing you now Government's Exhibit 14-A in evidence, which purports to be a check on the Valley Bank of Mesa, for \$1620, dated April 5, 1954, payable to Joe Short, for \$1620.

Is that the check you gave him?

A. Yes, sir.

Q. And that is Mr. Short's signature, as far as you know? A. As far as I know, yes, sir.

Q. Now, then, at the time that you got that lease, did you have any idea that there was anything wrong? A. No, sir. [286]

Q. With the Burns lease? A. No, sir.

Q. And after you got the lease, of course you went on farming? A. Yes.

Q. Do you remember receiving the allotment notices? A. Yes, sir.

Q. Do you remember they were the ones you

(Testimony of Rex L. Neely.)

turned over to Mr. Kennedy or Mr. Johnson, or one or the other of them?

A. I believe I can identify them, or remember the ones.

Q. I hand you Government's Exhibit 17-A for identification. Do you remember receiving that notice?

A. Yes, sir, I do.

Q. How did you receive it?

A. In the mail.

Q. From the ASC Office?

A. Yes, sir.

Q. That shows 252.2 acres allotted?

A. Correct.

Q. And referring to Government's Exhibit 17-B, that was also received by you?

A. Yes, sir, it was.

Q. In the mail?

A. In the mail.

Q. And that shows 319.8 acres? [287]

A. Yes.

Q. Then you received a notice for 400.8 acres?

A. Yes, sir, I did.

Q. That takes in the 81 acres that you leased from, or, rather, that you thought you leased from Burns?

A. Yes, sir, that is right.

The Court: The Court will stand at recess until ten o'clock Tuesday morning. Tuesday morning at ten o'clock.

Keep in mind the Court's admonition.

(Thereupon an adjournment was taken to Tuesday, September 16, 1958, at the hour of ten o'clock A.M.) [288]

Tuesday, September 16, 1958, Ten o'clock a.m.

The Court: You may proceed.

Mr. Whitney: If the Court please, Mr. Hays says he has no objection, and I would like to withdraw Mr. Neely from the stand for the purpose of putting on three short character witnesses.

The Court: Very well.

Mr. Whitney: Mr. Burt Lewis. [289]

BURT LEWIS

called as a witness for the Defendant Neely, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Whitney): What is your name, please? A. Burt Lewis.

Q. Where do you reside?

A. Chandler, Arizona.

Q. What is your business?

A. Farming, and mostly real estate.

Q. Do you hold an official position down there?

A. Mayor of Chandler.

Q. Are you acquainted with Rex L. Neely?

A. Yes, sir.

Q. How long have you known him?

A. Well, I would say all of his life.

Q. Do you know his reputation in the community in which he resides for honesty, integrity, and truth and veracity? A. Yes, sir.

Q. What is it, good or bad? A. Good.

Mr. Whitney: You may cross examine.

Mr. Holohan: No questions. [290]

Mr. Whitney: May I excuse the witness?

The Court: He may be excused.

(Witness excused.)

Mr. Whitney: Mr. Hoopes.

JOHN HOOPES

called as a witness for the Defendant Neely, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Whitney): Will you state your name, please. A. John Hoopes.

Q. Where do you reside, Mr. Hoopes?

A. I reside south of Mesa.

Q. Are you acquainted with Rex L. Neely?

A. I am.

Q. How long have you known him?

A. Fifteen, sixteen years.

Q. Pardon? A. Fifteen or sixteen years.

Q. Do you know his reputation in the community in which he resides for honesty and integrity?

A. I do.

Q. What is it? Good or bad? [291]

A. Good.

Q. Do you know his reputation in the community in which he resides for truth and veracity?

A. I do.

Q. What is it, good or bad? A. Good.

Mr. Whitney: You may cross examine.

Mr. Hays: No questions.

(Witness excused.)

Mr. Whitney: Mr. Asher.

WILLIAM I. ASHER

called as a witness for the Defendant Neely, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Whitney): Will you state your name, please. A. William I. Asher.

Q. Where do you reside, Mr. Asher?

A. In Mesa.

Q. What is your business?

A. I am Vice President and Manager of the Valley Bank there.

Q. At Mesa? [292] A. In Mesa.

Q. Do you know Rex L. Neely? A. Yes.

Q. How long have you known him?

A. About ten years, I believe.

Q. And do you know his reputation in the community in which he resides for honesty and integrity? A. Yes.

Q. What is it, good or bad? A. It is good.

Q. And do you know his reputation in the community in which he resides for truth and veracity?

A. Yes.

Q. What is it, good or bad?

A. It is very good.

Mr. Whitney: You may cross examine.

Cross Examination

Q. (By Mr. Hays): He is a good customer of your bank, isn't he? A. Yes, sir.

Mr. Hays: That is all.

(Witness excused.)

Mr. Whitney: Mr. Neely, will you take the stand again. [293]

REX L. NEELY

resumed the stand, and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Whitney): Mr. Neely, did you have any business dealings with Mr. Short in 1955?

A. I did.

Q. And what were those dealings?

A. I leased a farm from Mr. Short.

Q. And did you receive from Mr. Short — first, what did you say to Mr. Short?

A. Well, I had previously leased it for the 1954 crop.

Q. For the Burns farm?

A. For the Burns farm, and along about that time the 1955 allotment notices were being sent out. I contacted him at the ASC Office and inquired if the Burns farm allotment lease was going to be available.

Q. Do you remember what your first allotment notice was in 1955, for the crop year 1955?

A. The first notice was 306.1.

Q. And after you saw Mr. Short with reference to the Burns farm, what did he say in that regard?

A. He said on the Burns there would be less acreage in 1955 than there was in 1954, indicating—— [294]

Q. Did he tell you what that acreage was that you could have the allotment for?

(Testimony of Rex L. Neely.)

A. Yes, 70.6.

Q. And at that time, I believe, according to the Government's evidence, you gave him a check for \$1,410? A. Yes, sir.

Q. And that check is in evidence here as Government's Exhibit 14-B, right?

A. Yes, sir, that is right.

Q. Now, that check figures out on the basis—on what basis per acre did he say you could have that?

A. \$20 an acre. I am sure that is correct.

Q. That check is \$1,410. Fourteen hundred ten dollars would be seventy and one-half acres, is that right? A. Yes.

Q. Now, referring to Government's Exhibit 18-A in evidence, did you receive that allotment?

A. Yes, sir, I did, in the mail.

Q. All right. I notice that it says Allotment of 306.1 Acres there, and then there is under that the figure of 70.6.

When you received that in the mail, was that 70.6 thereon, do you remember?

A. I don't remember that it was on there.

Q. Do you know who put that on there?

A. No, sir, I do not. [295]

Q. That would leave you, then, with a total allotment, taking the Burns allotment into consideration, of 376.7 acres? A. Correct.

Q. Now, in 1955, do you know how many acres you planted? A. I planted—

Q. Pardon?

A. I planted 300—approximately 380 acres.

(Testimony of Rex L. Neely.)

Q. And did Mr. Short ever call your attention to the fact that in 1955 that you were overplanted?

A. Yes, he did.

Q. When was that?

A. I am not sure of the date. I believe it was August the 18th.

Q. August 18, 1955?

A. I am pretty sure that is correct.

Q. Now, what did Mr. Short tell you at that time?

A. He notified me that I was overplanted.

Q. On the short staple cotton?

A. On the short staple cotton.

Q. And did he say how much you were overplanted?

A. I don't believe he did. I am sure he didn't.

Q. Well, did he say anything about your having to destroy some cotton? A. Yes, he did. [296]

Q. What did you do after he told you that?

A. I went to the farm and instructed that 15 or 20 acres was to be, which I thought was to become within my allotment.

Q. In other words, after you had planted, I mean after you had destroyed that 15 or 20 acres, you thought that you were in the allotment of 306.1 acres, plus the amount of what you thought you were getting from the Burns farm, of 70.6, or 70.5?

A. Yes, sir.

Q. You thought you were in compliance?

A. Yes, sir.

(Testimony of Rex L. Neely.)

Q. Do you know whether or not Mr. Short afterwards measured your allotment? A. No, sir.

Q. I mean your farm for that year?

A. No, sir, I do not know for sure.

Q. Did you ever see Mr. Short on the farm?

A. I never did see him personally on the farm.

Q. Well, did you know he had been out there?

A. No. I am sure he said that he had been on the farm.

Q. After he had measured it—when did you pay him this \$10, Mr. Neely, for measuring?

A. I believe it was on the day that I destroyed this cotton, on August 18th, the same day.

Q. And after you destroyed it, or before, or at the time? [297]

A. I believe it was at the time.

Q. And that \$10 was given to him for what purpose?

A. For remeasuring the farm. That was the ASC charge for remeasuring a farm.

Q. And do you know whether you got a receipt for that ten dollars, or not?

A. I am not sure that I did. I believe so, but I was unable to find it.

Q. Now, after you paid that remeasurement fee, whenever it might have been, along in there, you never received any overplant notice?

A. No, sir, I did not.

Q. Now, there has been an exhibit introduced by the Government, known as Government's Exhibit

(Testimony of Rex L. Neely.)

11-B in evidence. Is that your signature on that exhibit? A. Yes, sir, it is.

Q. And did you sign it on or about the date that is shown there?

A. Yes, I believe that is the date. I am not sure.

Q. At the time that you signed this, did you read it? A. No, I did not.

Q. You didn't notice the figures there, 426.5 acres? A. No, no I did not.

Q. I will ask you if at the time you received that, was any of the writings on there, were any of those writings on [298] there showing destroyed cotton, in red ink?

A. No. I am sure they weren't.

Q. It wasn't there. That shows that you had destroyed 120.4 acres. That was not on there?

A. No, sir, I am sure it was not.

Q. Do you know how it got on there?

A. No, I have no idea.

Q. Did you have anything to do with its getting on there? A. No, sir, I didn't.

Q. Now, you never received, as I understand it, any notice of overplant for 1955? A. No, sir.

Q. And you never received any notice of penalty for 1955? A. No, sir.

Q. I believe you testified that after you had plowed up that cotton, that you actually thought you were in compliance? A. Yes, sir.

Q. Did you plant, if you know, the 426 acres that is shown on this Government's Exhibit 11-B? You

(Testimony of Rex L. Neely.)

told me, I believe, that you only planted 300 and some acres?

A. I believe I planted 388, from 300 to 388.

Q. So that after you had destroyed the 15 or 20 acres, you thought that you were in compliance, and within the 376.7 acres? A. Yes, sir. [299]

Q. Which was the allotment to you, plus the allotment from the so-called Burns farm?

A. Yes, sir.

Q. Which we now know never existed?

A. Yes, sir.

Q. Did you know that the Burns farm never existed in 1955? A. No, I didn't.

Q. Why didn't you ask—I will do a little cross examining for the Government—why didn't you ask Mr. Short for a lease, or did you?

A. I was told that a lease under one year was not required to be in writing.

Q. In your statement to the Government, returning to 1955, I believe you stated that you never asked anything further about the lease?

A. That is correct.

Q. After you had asked him if the Burns farm was still for lease? A. That is right.

Q. After you had told him that you asked for reduced acreage. A. Yes, sir.

Q. Now, concerning Extra Long Staple cotton, do you remember, Mr. Neely, what your allotment was? [300] A. For the 1955?

Q. In 1955.

A. I believe it was 300—I mean 3.8.

(Testimony of Rex L. Neely.)

Q. How much was planted?

A. I believe it was 5.1.

Q. Did you receive any notice of overplant there?

A. No, sir, I didn't.

Q. Did you receive any statement from the Government asking you to pay a penalty for that overplant?

A. No, sir, I did not.

Q. Now, in that year 1955, you did overplant extra long staple cotton in Maricopa County?

A. Long staple cotton?

Q. In Maricopa County, yes.

A. No, sir.

Q. Did you overplant short staple?

A. Yes, sir.

Q. Do you remember the amount of that overplant?

A. 9.3 acres.

Q. Nine point what?

A. Three.

Q. Referring to Defendant's Exhibit number K, I know you can't remember, because this shows 9.8 acres.

A. Oh, well, that is correct, then.

Q. And you received that from the Department of [301] Agriculture, the Maricopa County ASC Office?

A. Yes, sir, I did.

Q. Showing that you planted that, and you were assessed a penalty of 17.7 cents a pound?

A. Yes, sir.

Q. And referring to Defendant's Exhibit L in evidence, is that the check that you paid the Treasury of the United States for that overplant?

A. That is the check.

(Testimony of Rex L. Neely.)

Mr. Whitney: I now, Mr. District Attorney, offer Defendant's Exhibit K in evidence.

Mr. Hays: No objection.

The Court: It may be received.

The Clerk: Defendant's Exhibit K in evidence.

(Said Letter dated 9/12/55 was received in evidence and marked as Defendant's Exhibit K.)

Q. (By Mr. Whitney): Now, if you had received a notice of overplant for 1954, or 1955, with an assessment of the penalty, would you have paid it? A. I most certainly would have.

Q. Did you make any quarrel about that Government's measurement of your Maricopa County Farm? A. No, I didn't.

Q. Did they ask you to plow up any of that excess acreage in Maricopa County, or just did they measure it and send you [302] a bill for the penalty?

A. They measured it and sent a notice of the penalty.

Q. Now, with reference to 1954, the 1955 marketing card, referring to Government's Exhibit 16-A in evidence, apparently it is the 1954 Upland Cotton Marketing Card. That is your signature on that card? A. Yes, it is.

Q. And where did you get it?

A. I got it at the ASC Office at Casa Grande.

Q. And did you note on there the amount of your 1954 allotment, and your actual planted cotton at the time you took the card?

(Testimony of Rex L. Neely.)

A. I don't recall that I did.

Q. Are you in the habit of reading what you sign when you go into that office?

A. No, not word for word.

Q. You notice it says the 1954 allotment, 400.8 acres, which is correct, assuming that the Burns lease was not a fake, and that you only planted 388.9 acres?

A. Yes, sir.

Q. Then you were not overplanted in 1954 on Upland Cotton?

A. That is correct.

Q. If the Burns lease was bona fide, as far as you were concerned?

A. That is correct. [303]

Q. Now, on your 1955 Upland Marketing Card, which is Defendant's Exhibit 16-B in evidence, where did you get that—that is your signature down there, isn't it?

A. Yes, sir.

Q. Where did you get that card?

A. I got this at the Casa Grande ASC Office.

Q. You got it at the time you signed your Form 578?

A. Yes.

Q. And that shows on it a 1955 allotment of 306.1 acres, and planted cotton, 306.1.

How do you account for that?

A. I have no knowledge.

Q. Did you notice that when you got it?

A. I don't believe I did. I am sure I didn't.

Q. Now, Mr. Neely, referring to Government's Exhibit 11-C in evidence, which is the Report of the 1955 Acreage of Long Staple Cotton, that is your signature?

A. Yes, sir, it is.

(Testimony of Rex L. Neely.)

Q. Is that Mr. Short's signature, or do you know?

A. I believe that is, it looks like it is.

Q. And you got that, when you got your marketing card for 1955 Long Staple?

A. I signed this, yes.

Q. Do you remember that this acreage was out there, or did you look at it particularly? [304]

A. I didn't look at it actually. Actually, I didn't know what the form was.

Q. You know it was a Form 578?

A. That's all I knew.

Q. Did you notice those red figures on the Destroyed Final, in red ink, did you notice whether or not those were on that exhibit number 11-C at the time you signed it?

A. I don't believe they were. I don't remember seeing them.

Q. Well, you would have been apt to see them if they were in red ink, wouldn't you?

A. Yes, sir, I would have. I believe I would have.

Q. Now, referring to Government's Exhibit 9-A in evidence. You have never seen that before, have you?

A. No, I haven't.

Q. It is not signed by you?

A. No. No signature.

Q. It has to do with the W. R. Burns farm, right?

A. That's what it says, yes.

Q. You don't know anything about that?

A. I know nothing about that.

(Testimony of Rex L. Neely.)

Q. You had nothing to do with making up the figures on that, or anything about it, did you?

A. No, sir. I have never seen it.

Q. You never discussed it? [305]

A. Never discussed it.

Q. You don't know anything about it?

A. No.

Q. Referring to Government's Exhibit 11-A, which apparently is Report of 1954 Acreage. It shows 389.9 acres.

Did you ever see that before, that you know of?

A. No, I have never seen that.

Q. At least that is not signed by you?

A. There is no signature.

Q. Who is this John Murphy? Is that it, Murphy?

A. I presume that is it.

Q. Who was he?

A. I don't know him. I don't know anybody by that name.

Q. Did you have anything to do with preparing that report?

A. No.

Q. Was it ever discussed with you?

A. No.

Q. Do you know anything about it at all?

A. Don't know anything about it.

Q. Now, there is something in this statement that you made to the Government Agents, or, rather, that was written up by the Government Agents that you didn't sign, but that you looked over.

With reference to ginning some of your cotton at

(Testimony of Rex L. Neely.)

the Chandler Gin Company, that is located in Maricopa County, [306] isn't it? A. Yes, sir.

Q. On an eligible card from Pinal County. Will you tell the Jury how that came about, if you know.

A. This cotton that was in Maricopa County, and it was ginned at the same gin that I gin my Pinal County farm cotton on, and I don't believe I was aware at the time that you couldn't market the same cotton on the same Marketing Card from two counties. I don't believe I was aware of it at that time.

Q. There was no charge in the indictment covering that. I just simply asked, because it is in this statement you made.

Now, Mr. Neely, when you placed this Pima or long staple cotton, was some of that placed under loan, or do you remember?

A. I believe some of it went under loan.

Q. And did you at that time believe there was any irregularity in getting a loan on that cotton?

A. No, I didn't, not at that time.

Q. When did you first hear about that, that there might be an irregularity?

A. I believe it was in December.

Q. Of what year? A. 1956.

Q. Nineteen which? [307] A. 1956.

Q. That is after the Agent had talked to you?

A. Yes, sir.

Q. Up until the time that he talked to you, did you have any idea that there was anything wrong with this so-called lease of the Burns farm, or re-

(Testimony of Rex L. Neely.)

ceiving a cotton allotment through what you thought was the Burns farm?

A. No, I didn't. I thought everything was open and above board.

Q. When did you first become suspicious of that?

A. My first suspicions was on December, I believe it was the 19th, I had some suspicions then. And then on the 28th of December of 1956.

Q. 1956?

A. Yes. I knew that I was reasonably sure that it was all a phoney deal.

Q. Now, Mr. Neely, do you remember what your allotment was for the year 1956 of short staple cotton?

A. 366.

Q. 300 and what?

A. 366.7.

Q. And was that the first allotment notice you got, or the second, or do you remember?

A. I believe that was the first.

Q. Referring to Government's Exhibit 19 in evidence, [308] this allotment notice, apparently signed by J. E. Beggs on December 1st, 1955, addressed to you at Chandler, was 306.7. Do you remember getting that?

A. Yes, I do.

Q. How did you receive it, do you remember?

A. I received it in the mail.

Q. Did you receive another allotment notice after that?

A. I am not sure. I don't think I did.

Q. At that time your allotment was 306.7, and you got an extra 60 acres, was it?

(Testimony of Rex L. Neely.)

A. Yes, sir, from the Burns farm lease allotment.

Q. For 1956? A. Yes.

Q. That would make it 366.7?

A. Yes, sir.

Q. Tell us the conversation you had with Mr. Short with reference to securing that second 60 acres.

A. As I remember, it was in, I believe it was in December of 1955, I contacted Mr. Short at the ASC Office, and asked him the availability of the Burns farm lease, the allotment off the Burns farm.

Q. What did he say?

A. He indicated that he would have to see Mr. Burns, that I should contact him later.

Q. Did you contact him later? [309]

A. Yes, I did.

Q. And what time was that, if you remember. I realize you can't give the exact date.

A. It must have been along the, pretty close to the 20th, I would just guess.

Q. Of December? A. Yes.

Q. Just to refresh your memory, I am handing you Government's Exhibit 14-C in evidence, which is a check dated December 9, 1955, payable to Joe Short for \$1750. Is that the check you gave him?

A. Yes, it is.

Q. And that is the check you gave him at the last conversation you had with him about that farm?

A. Yes, it is.

Q. At that time, did you think, or did you be-

(Testimony of Rex L. Neely.)

lieve, rather, that this was a bona fide allotment from the Burns farm, or a bona fide lease?

A. I most certainly did.

Q. Did you have anything in your mind that would cause you to believe that it wasn't a bona fide transaction.

A. Not a thing in the world, I did not.

Q. Now, referring to the check covering the 1955 due, which is dated November 22nd, 1954, payable to Joe Short, and signed by you, and being Government's Exhibit 14-B in evidence, [310] I see a notation in the corner there. Do you know what that is? I can't read it.

A. "Cotton base," I believe. "Base."

Q. Or "lease"? A. Or "lease."

Q. You wrote it, didn't you?

A. I believe it is "base. Cotton base."

Q. Did you write it, or not? A. Yes.

Q. Now, to finish up with this 1956. In connection with the Form 578 which the Government has introduced here in evidence, which shows 477.7 acres, you stated that you never saw that on the Government's Exhibit 11-D?

A. That is correct.

Q. And did you ever receive an overplant notice for your 1956 overplant?

A. No, sir, I did not.

Q. Do you know whether it was measured up?

A. No, not through the—not until December, I believe it was December 28th when H. L. Mathis and Ray Wolfe came out.

(Testimony of Rex L. Neely.)

Q. What date was that?

A. I believe it was December 28.

Q. And who measured it, Mr. Mathis?

A. Mr. Mathis and Mr. Wolfe in the State Office. [311]

Q. Did you see them out there measuring it?

A. Yes, I gave him permission to go ahead.

Q. Did you talk to them? A. Yes.

Q. What was said? A. They said——

Q. Was there anybody else present? Just you and Mr. Mathis and Mr. Wolfe?

A. No, there was not.

Q. What was said?

A. They said they were sent out by the State Office to measure my farm.

Q. What did you say?

A. I told them that, I told them to go ahead and measure it. I asked them if they knew of the extra cotton acres from the Burns farm.

Q. Had you already finished picking at that time?

A. We were practically through, yes.

Q. Was there any further discussion had with Mr. Wolfe and Mr. Mathis, or either of them, with reference to what was to be done about this over-plant?

A. Yes, I believe that was on a Friday. They came out and measured my farm, and they said they had some other farms to measure the following day, so I contacted H. L. at his home. [312]

Q. Contacted who? A. H. L. Mathis.

(Testimony of Rex L. Neely.)

Q. On what?

A. By phone. I believe it was Saturday evening, and asked him if I could meet him Sunday there at his home.

Q. What did you ask him, or did you see him?

A. Yes, I went to Casa Grande that Sunday, and Mr. Wolfe was there, and I wanted to find out the result of the measurement.

I asked him at this time if there was, if I couldn't pay my penalty and get this thing straightened up.

Q. What did he say?

A. He didn't know for sure. He didn't imply that it could be, or would be.

Q. You heard Mr. Mathis and Mr. Wolfe testify here that the penalty was practically made up, or made up and somebody stopped him from sending it out to you, that is, the notice of your penalty on account of overplanting in 1956?

A. Yes, I heard that testimony.

Q. You yourself didn't know that it had been made out at the bank? A. No.

Q. But expected to get it?

A. Well, I called H. L. at the office.

Q. You mean H. L. Mathis? [313]

A. H. L. Mathis at the office sometime during the following week, and asked him if he had made out a penalty notice,

He inferred that he had, but that he couldn't go further, because he was instructed to hold up on the notice on the penalty.

(Testimony of Rex L. Neely.)

Q. Do you know how much he said you were overplanted in the year 1956?

A. I believe he said over a hundred acres.

Q. Now, at that time, Mr. Neely, was there any discussion with Mr. Mathis about this additional 60 acres that you got under the purported Burns lease?

I say "purported," because it now develops there was no such a thing as the Burns farm, except on the books.

A. I stated that I had a lease from Mr. Burns, 60 acres.

Q. And did you claim that you were not as much overplanted as they claimed, in view of that lease?

A. No.

Q. Or was there anything said about it?

A. No, I didn't claim that.

Q. You didn't discuss it. Did you ever ask Mathis the results of the measurement?

A. Yes.

Q. And at that time, you mentioned to him and Mr. Wolfe about this additional, that you had a lease for an additional 60 acres? [314]

A. Yes, sir, I did.

Q. And you told that to the government agents at the time when they examined you, or talked to you in, oh, when did they talk to you? In March, or before?

A. Yes, I believe the first part.

Q. Now, with reference to this first Statement that was introduced in evidence, which, incidentally I never heard of before, Government's Exhibit 25 in evidence; this statement is dated January 22nd,

(Testimony of Rex L. Neely.)

1957, Chandler, Arizona. Do you remember that now? A. Yes, it was in January.

Q. Why didn't you tell me about that statement? Did you forget it? A. I think I forgot it.

Q. Whatever the circumstances under which that statement was given, I see it is signed by Mr. Doyle H. Kennedy and Lloyd N. Johnson, as witnesses, and apparently that is your signature there?

A. Yes, that is right.

Q. How did they come to get that statement?

A. I gave them that statement in the ASC Office, the date shown there. I was in the office on some other business, and they heard, I believe, that I was in there, and they called me in in the back, in their office.

Q. Was that down at Casa Grande? [315]

A. Yes, sir.

Q. The ASC Office at Casa Grande?

A. Yes, sir.

Q. How did this come to be dated Chandler, Arizona? Do you remember that?

A. No, I don't.

Q. But read the statement over now, and see if you can identify whether that was given in Chandler, or at the ASC Office. I never heard of that Statement before I saw it in the courtroom.

A. Well, it is my recollection they made a, I believe they made a statement at Casa Grande, and then at my home.

Q. And they condensed the statement that you

(Testimony of Rex L. Neely.)

had given them into this document here, marked Government's Exhibit 25, or do you know?

A. I don't know. I presume they did.

Q. That is not your handwriting, is it?

A. No, this is not my handwriting.

Q. Do you know who wrote it up?

A. I believe Mr. Johnson did.

Q. All right. Was that written up in your presence, or written up after you had made the statements, and then it was presented to you for signature?

A. I believe it was made up during the conversation. I mean I believe it was, but I am not positive. [316]

Q. I notice that this is purportedly signed on each page, "Rex L. Neely." Is that your signature?

A. Yes, sir.

Q. Was there any tape recording used in the making of this, that you know of?

A. Not that I know of.

Q. And later you gave rather a long-winded statement to these government agents?

A. Yes, sir, I did.

Q. Were they both present at all times?

A. Not all the time, but I believe practically.

Q. Can you tell us—I know you can't remember dates, it is pretty hard—I can't remember what I had for breakfast yesterday morning, but can you tell us about, forgetting this statement of January 22nd, or whatever date that is, can you tell us

(Testimony of Rex L. Neely.)

about the time that these other statements were made by you? A. On the recordings?

Q. They were on tape recordings?

A. Yes.

Q. Yes, I know that. Do you know when they were made, or can you remember?

A. I believe it was within ten days of this statement.

Q. Of the January one? A. Yes. [317]

Q. And you heard Mr. Johnson testify that, and probably Mr. Kennedy, that this statement here which is now in evidence as a Government's Exhibit 24, was written by the government agents, and shown to you? A. Yes, that is correct.

Q. And that you did make some corrections?

A. Yes, I did.

Q. Now, Mr. Neely, what is the extent of your education? A. I went through high school.

Q. Ever been to college?

A. No, sir.

Q. Are you familiar with all the technical terms and verbiage in this statement, Government's Exhibit 24 in evidence? A. I am afraid not.

Q. How long did you spend in reading that over before you determined whether or not you would sign it?

A. I would say probably ten——

Q. Pardon me?

A. Ten or fifteen minutes.

Q. And I notice that it is not signed.

A. No, sir.

(Testimony of Rex L. Neely.)

Q. Why didn't you sign it?

A. I wanted to get in contact with the lawyer before I made anything final. [318]

Q. And did you tell them that?

A. Yes, sir, I believe I did.

Q. I see. Who is the lawyer you were going to contact? A. Dick Johnson.

Q. That is a lawyer at Mesa?

A. At Mesa.

Q. Is he your regular lawyer?

A. Well, I wouldn't say that. I have never had a lawyer, I mean, I never had occasion to have a lawyer before.

Q. Why didn't you get Dick Johnson? Did they give you time, or what was the situation?

A. I couldn't contact him the night that this statement was handed to me. I tried to get in contact with Mr. Johnson but he was out and I couldn't reach him by phone.

Q. And the government never left a copy of that statement with you?

A. No. I asked for a copy, but——

Q. They wouldn't give it to you? A. No.

Q. Or they didn't, at least?

A. They didn't give me a copy.

Q. The only time you saw that statement after you had seen it was after I had gotten it from the prosecuting attorney?

A. Yes, sir, that is correct. [319]

The Court: We will have our morning recess at this time.

(Testimony of Rex L. Neely.)

(Recess.)

The Court: You may continue.

Q. (By Mr. Whitney): Now, Mr. Neely, I don't know whether I have asked you or not, I have forgotten. In connection with Government's Exhibit 16-C in evidence, which is the purported 1956 Upland cotton marketing card, is that your signature on that? A. Yes, sir.

Q. And that was issued, according to this signature, on October 3rd, 1956? A. Yes.

Q. And covered your 1956 Upland cotton?

A. Yes, it did.

Q. Now, tell us the circumstances under which you received that Marketing card.

A. As I recall, I went to the ASC office a number of times that year, but this particular time I got my marketing card I was talking to H. L. Mathis in there about my ACP practice, and stating that I was going to be picking cotton pretty soon, and would like to get my marketing card.

And as I recall, he instructed Mrs. Goldsten, who was in the next office, I believe, to get my file and give me a marketing card. [320]

Q. For 1956? A. Yes, sir.

Q. And that is the card you got?

A. Yes, sir.

Q. And it was given to you by Mrs. Golsten?

A. Yes, sir.

Q. Was Mr. Short in the office then?

A. I didn't see him in the office.

Q. And do you remember who signed the card,

(Testimony of Rex L. Neely.)

"H. L. Mathis", and then there is a couple of initials after it, or do you remember that?

A. No, I don't remember that. Mr. Mathis instructed Mrs. Golsten to get my file, and I don't know whose writing that is.

Q. Mrs. Golsten, did she discuss your file with you? A. No, sir, she didn't.

Q. What did she do? Examine the file and then issue the marketing card?

A. I believe so.

Q. And you just did that like the other marketing card, you put it in your pocket and went on about your business? A. Yes, sir.

Q. What did you do with the marketing card when you got them, any of them? What is the purpose of them?

A. Well, you're supposed to take it to the gin, and it [321] makes you eligible to market your cotton.

Q. And have you ever had any cards issued to you "non-eligible"?

A. No, not by Pinal County.

Q. Now, you have in Maricopa?

A. Yes. I am pretty sure that I have. I think that I have.

Q. I see. Now, then, in those you didn't get out a government loan, you didn't put your cotton in CCC loan? A. No.

Q. When you got that card, did you pay any particular attention to the 1956 allotment, 367.7 acres, and planted cotton 306.7? A. No.

(Testimony of Rex L. Neely.)

Q. Who wrote that on there?

A. I don't have any idea.

Q. Mrs. Golsten issued the card, didn't she?

A. Yes.

Q. She gave it to you? A. Yes.

Q. And the testimony is by Mr. Mathis that she signed it at his request? A. Yes.

Q. Do you know whose handwriting that is up there? Check it again. It is H. L. Mathis? [322]

A. No, I don't know for sure. It says H. L. Mathis, but I am not sure of his writing.

Q. Of the other handwriting?

A. Of the other handwriting.

Q. You had nothing to do with it?

A. No, sir, I did not.

Q. Short had nothing to do with it?

A. I didn't see him there?

Q. When was Joe Short first sick, do you remember? A. No. No, I don't.

Q. Well, he had been on and off in the office there for some period of time. You knew he worked part-time some of the time, didn't you?

A. I was told he had worked part-time. I don't know.

Q. In other words, after closing your transactions for the three years in question, 1954, 1955, and 1956 with Mr. Short, you had very little occasion to see him? A. That is correct.

Q. Now, Mr. Neely, in your statement to the government, with reference to your 1956 cotton, this is your unsigned statement, it says:

(Testimony of Rex L. Neely.)

"In my overplanting and failure to destroy the excess cotton, there were also other considerations which made me reluctant to destroy cotton. In 1956 I was over-extended on water, with the result [323] that there were burned areas in my cotton and it looked as if my crop would not be as heavy as expected on that account, thus reducing my income. I was reluctant to destroy any of it because of this. In addition, in connection with the 1955 crop, there was talk among farmers that a lot of them were not destroying their excess cotton, and there was also talk about laxity in administering the program in the ASC Office, both in 1955 and 1956."

Was that practically the statement that you made?

A. Yes.

Q. Now, in the next sentence you said:

"I guess I thought I might get by without plowing up my excess cotton in 1956."

Is that the statement as you made it?

A. I am not sure that I made that last remark there.

Q. What do you remember? What did you say, or do you remember?

A. As I recall that, being late in the season, I thought I would get a penalty notice later in the season.

Q. For the 1956 cotton? A. Yes.

Q. Now, Mr. Neely, referring to Government's Exhibit—well, we will do it one at a time—referring to Government's Exhibit 14-A, which is the check dated April 5th, 1954, that [324] is the sec-

(Testimony of Rex L. Neely.)

and check you gave Short, which you didn't stop payment on. Was that entered on your books?

A. Yes, it was.

Q. And taken off your income tax?

A. Yes, sir.

Q. As what? A. As a lease.

Q. Referring to the Exhibit 14-B in evidence, Government's Exhibit, which is a check to Joe Short for \$1410, covering the 1955 deal of 70 and 1/2 acres, where you marked on it "cotton base", or "cotton lease", did you put that on your books?

A. Yes, as a lease.

Q. How was it put on your books?

A. It was a lease of the Burns farm.

Q. You took it off your income tax?

A. Yes, sir.

Q. Everything over and above-board on it?

A. Yes, sir.

Q. Referring to Government's Exhibit 14-C in evidence, a check dated 12/9/55, payable to Short for \$1750, was that put on your books?

A. Yes, sir, it is.

Q. And how?

A. As lease of the Burns farm, I believe. [325]

Q. And taken off your income tax, deducted?

A. Yes, sir.

Q. For that year? A. Yes, sir.

Mr. Whitney, awhile ago, I believe you asked me if any of that cotton had been put on loan, CCC.

Q. Yes.

A. I believe some of it was. I believe you asked

(Testimony of Rex L. Neely.)

me and I said it was not, but Calcott, they handled my cotton. I don't know what they did, but I presume they did. They could have.

Q. You didn't tell them one way or the other?

A. No, sir.

Q. You didn't finance with Calcott?

A. No, sir.

Q. You finance yourself?

A. No, Valley Bank.

Q. Now, with reference to that Government's Exhibit 14-C dated December 9th, 1955, for 60 acres of cotton, and I believe you said that you would guess the price put on it by Short was \$25 an acre for that year.

Will you explain to the Jury how that extra \$250 got on there?

A. This is on the 1956?

Q. That is the 1956. [326]

A. But it happened in 1955, I think the check was dated.

Q. In 1955?

A. Yes, 1955, yes, sometime. I went to the office there, like on the other occasions, and asked Mr. Short about the Burns allotment lease. He indicated that it would be for 60.7 acres, but this year that it would be \$25 an acre, it would be more than it had been.

Q. And why didn't you write him out a check then for \$1500?

A. Because I thought the cotton was worth, the

(Testimony of Rex L. Neely.)

cotton acreage was worth more than I had been paying originally.

Q. And was there anything said there with reference to Short's wife?

A. I am not sure that it was said at that time. I knew that not from him, but through other employees there that he was going to have some hospital expense.

Q. For whom?

A. For his wife. But my primary reason was that the cotton base was worth more than I had been paying.

Q. Before we get down to this, Mr. Neely, I would like to ask you when you made application first for your ACP payments, I think that's what they call them, for the ditch lining in Pinal County, if you remember?

A. I remember seeing the application the other day, in November. [327]

Q. You couldn't remember when you did that?

A. No, not specific dates.

Q. Was the time prior to the time that you built or actually put in that ditch?

A. I don't remember. I don't recall.

Q. Pardon? A. I don't recall.

Q. Anyway, the application is apparently dated November, 1953, which somebody marked "cancelled" on, and we will show about that later.

You actually put the ditch in between January and March, 1954, is that right?

A. Yes, I put in some ditch at that time.

(Testimony of Rex L. Neely.)

Q. And did you inquire about your payments on it from time to time for that ditch?

A. No, sir, I didn't.

Q. When did you finally get your payment?

A. I believe it was in the latter part of 1954, I believe.

Q. Now, Mr. Neely, before we go down to some of these exhibits, I want to ask you, do you know a man, or did you ever know a man by the name of Doyle H. Dunkin, or Doyle L. Dunkin?

A. No, sir, I don't know anybody by that name.

Q. I hand you now Government's Exhibit 12-D in evidence, [328] which says "Concrete ditch lining, Section 13, 4 South, 3 East."

Do you know anything about that?

A. No, I don't. I don't know anything about this.

Q. Did you write that? A. No, sir.

Q. Do you know who did?

A. I haven't any idea.

Q. Did you have anything to do with that document? A. Not in the least.

Q. Referring to Government's Exhibit 12-E in evidence, which is Practice Tentatively Approved, June 1st, 1954, Concrete Ditch Lining, Referring to Section 13, 4 South, 3 East, that is your ground, isn't it? A. Yes.

Q. I notice that is signed by Doyle H. Dunkin, purportedly? A. Yes.

Q. Did you have anything to do with that?

A. No, sir.

(Testimony of Rex L. Neely.)

Q. Did you ever know of it before you talked to the agents? A. No, sir.

Q. And when was that, the latter part of December, 1956, I believe you talked to the agents about it?

A. The first part of 1957, January.

Q. And did you have any active part in that?

A. No, sir, I didn't.

Q. Showing you Government's Exhibit 12-G for identification, marked Supervisor's Field Sheet—25, with a lot of figures, and some drawings on that, did you ever see that?

A. No, I have never seen that sheet.

Q. Either front or back? A. No, sir.

Q. Do you know anything about it at all?

A. No, sir.

Q. You didn't have anything to do with it?

A. No, sir, I didn't.

Q. Referring to Government's Exhibit 12-C, for a land leveling of 350 dollars, that is not involved here, did you know anything about that? That is Approved Practice, and application for payment. Did you ever get \$350?

A. Well, I don't know that I did.

Q. That was switched, wasn't it, to ditch lining sometime prior to that time? A. Yes.

Q. Did you know that \$1500 was the limit that any one farmer could get? A. No, I didn't.

Q. Who did you rely on for such information?

A. The office, the ASC Office.

(Testimony of Rex L. Neely.)

Q. Now, I show you Government's Exhibit 12-A in evidence. [330] Is that your signature?

A. Yes.

Q. Dated May 24, 1954? A. Yes.

Q. Approved by R. B. Elsberry? A. Yes.

Q. On 5/27/54. Did you know anything about that other than signing that? A. No.

Q. I notice there is "Request for Change of Approval from 1st to Second Practice, 5/27/54."

Do you know whose handwriting all that is?

A. No, I don't know anything about the handwriting.

Q. You've got the Land Leveling scratched out, and the Ditch Lining \$1500? A. Yes.

Q. Was that made out at the time you signed it, or do you know?

A. I don't know whether it was or not. I couldn't swear to it.

Q. You signed that just like you did most any of the documents that they handed you?

A. Yes.

Q. Now, referring to Government's Exhibit 12-B, dated May 25, 1954, Rex L. Neely, 1954 ACP, Land Leveling, June, [331] \$1500, and that was cancelled out, wasn't it? A. I think so.

Q. You never got the money for that?

A. No.

Q. That is dated July 23rd, 1954, and signed Ray W. Bates. Do you know who he is?

A. Yes, I know Mr. Bates.

Q. Who is he?

(Testimony of Rex L. Neely.)

A. I believe he is head of the ACP.

Q. Referring to Defendant's Exhibit G for identification, which is Request that Federal Government Share Costs of Needed Conservation Practices, 1954, Agricultural Conservation Program.

Your farm number is 647?

A. Yes.

Q. And that is stamped in there, 86-011 647?

A. Yes, sir.

Q. Pinal County. A. Yes, sir.

Q. Rex L. Neely, owner, 699 North Washington, Chandler. That is your land described in there?

A. Yes.

Q. A farm? A. Yes.

Q. Is that your signature on there, Mr. Neely?

A. Yes, sir.

Q. It is. And that is dated——

A. November 2nd, 1953.

Q. And that was for the concrete ditch lining, \$1500? A. Yes.

Mr. Whitney: I now offer this in evidence.

Mr. Holohan: We have no objection.

Mr. Whitney: I beg your pardon?

Mr. Holohan: No objection.

The Court: It may be received.

The Clerk: Defendant's Exhibit G in evidence.

(Said Request to Share Costs was received in evidence and marked as Defendant's Exhibit G.)

Q. (By Mr. Whitney): Mr. Neely, calling your attention to Government's Exhibit 12-F in evidence,

(Testimony of Rex L. Neely.)

which is Approved Practices and Application for Payment, apparently on your farm. Is that your signature there? A. It is.

Q. And did you sign it on or about that date, or did you write that?

A. I didn't write that. I don't know at what time I did sign it. It says there September 27.

Q. Now, when you signed that, would you tell me whether the words "No" were written in on both places in the last paragraph, in red printing, if you remember? [333] A. No, they weren't.

Q. Who gave you that to sign?

A. I believe Mr. Short.

Q. And do you know anything about this "P. B. H., 9/25/54", or anything like that?

A. No, sir, I do not.

Q. Do you remember whether this red ink was up there or not, or do you remember it?

A. I don't remember it being there.

Q. And that is the only ditch lining that you collected for in Pinal County, was that \$1500?

A. Correct.

Q. And you got your payment for that sometime after you signed that document, Government's Exhibit 12-F? A. I believe so.

Q. And that was for the work that was done in connection with that application, Defendant's Exhibit G, which is the application made in November, 1953? A. I presume so.

Q. You never received any payment between No-

(Testimony of Rex L. Neely.)

vember, 1953, and September, 1954, from Pinal County practices, except that \$1500?

A. I am not sure.

Q. Well, not for ditch lining. I mean for ditch lining for 1954 practices? [334]

A. That's right.

Q. And this Defendant's Exhibit G in evidence, which was made in November, 1953, which Mr. Johnson said was proper, if it was proper as far as time is concerned, it was for the 1954 Agricultural Conservation Program?

A. Yes.

Q. Referring to Defendant's Exhibit H for identification, which is a document entitled Practices Tentatively Approved Which Require Determination of Need and Practicability, referring to this farm 647, 1954 ACP, which means "practices"?

A. Yes.

Q. Do you know that date of November 5, 1953?

A. Yes.

Q. Would you examine that document and tell me where you received that, if you remember.

First, did you ever receive it?

A. I believe so. I believe it came in the mail.

Q. Well, you gave it to me, didn't you?

A. Yes.

Q. All right, how did you receive it?

A. I believe it came through the mail.

Q. That is a concrete ditch lining, November, 1953, it was intended to start, and the cost was \$1500?

A. Correct.

(Testimony of Rex L. Neely.)

Mr. Whitney: I offer "H" in evidence. [335]

Mr. Holohan: No objection.

The Court: It may be received.

(Said Form ACP-247 was received in evidence and marked as Defendant's Exhibit H.)

Q. (By Mr. Whitney): Now, Mr. Neely, referring to Defendant's Exhibit F for identification, which is a letter supposedly from Rodney Elsberry, Chairman of the Pinal County ASC Committee, dated October 11, 1957.

Where did you receive that?

A. I received it through the mail.

Q. And attached to that letter are certain documents asking for your cotton history?

A. Yes, sir.

Q. Did they come with that letter?

A. Yes, sir, they did.

Q. Do you know of your own knowledge what those were for, or are we going to have to rely on what Mr. Johnson told us?

Mr. Holohan: I object to going into this line of questioning on this particular document. It is dated after the time of the indictment, and can have nothing to do with this case. It is immaterial.

Mr. Whitney: If the Court please, as late as October, October 11, 1957, they were trying to get the history of this thing, and it was after his indictment, and I wouldn't [336] let him give it.

Mr. Holohan: We think it is immaterial.

Mr. Whitney: And it has to do with determining the penalty for his 1956 overplant.

(Testimony of Rex L. Neely.)

Mr. Holohan: We think it is immaterial.

Mr. Whitney: We don't. I offer this in evidence.

The Court: All right, it may be received. Go ahead.

Mr. Holohan: We object to its admission.

The Court: All right, I have ruled on it.

The Clerk: Defendant's Exhibit F in evidence.

(Said Letter and Forms were received in evidence and marked as Defendant's Exhibit F.)

Q. (By Mr. Whitney): Now, Mr. Neely, getting back to the transaction you had with Mr. Short on April 5th, 1954, and the prior conversation you had with him when you gave him a check on March 20th, 1954, for \$1,620; and he gave you this lease, this so-called alleged lease from W. R. Burns. Do you remember that? A. Yes, sir.

Q. At that time did he give you any other document to sign?

A. He gave me a sub-lease, I believe it said.

Q. Never mind what it said. Did he give you one? A. Yes, sir. [337]

Q. And at the same time as the original?

A. Yes, as the original.

Q. And it was already made out, is that right?

A. Yes, sir.

Q. I hand you Defendant's Exhibit I for identification. Is that the sub-lease that he gave you to sign? A. Yes, it is.

Q. Did you sign the original? A. Yes, sir.

(Testimony of Rex L. Neely.)

Q. What did you do with the original?

A. I took it home with me.

Q. I know, but did Mr. Short get a copy, or wasn't this your copy, or do you remember?

A. I don't remember.

Q. But you signed one of them anyway?

A. Yes.

Q. Did you sign the sub-lease, too, or do you remember?

A. I signed the one. I remember signing the one.

Q. And you gave me that? A. Yes, sir.

Q. Why didn't you call that to the attention of Mr. Short and Mr. Kennedy at the time that they were examining you about this matter?

A. It had slipped my mind. I didn't think of it, was the only reason. [338]

Mr. Whitney: I offer this for whatever it may be worth.

Mr. Hays: We don't care.

The Court: It may be received.

The Clerk: Defendant's Exhibit I in evidence.

(Said Sub-lease was received in evidence and marked as Defendant's Exhibit I.)

Q. (By Mr. Whitney): Now, Mr. Neely, with reference to Counts I, III, and V of the indictment, you were charged with giving Mr. Short \$1620 in Count I, which covered 1954; \$1410, covering the crop year 1955; and \$1750 covering the crop year 1956.

And this indictment charges you with giving that

(Testimony of Rex L. Neely.)

as a bribe to Mr. Short to secure that extra cotton allotment.

I want you to tell this Jury whether or not you gave that to Mr. Short as a bribe, or ever intended it for that?

A. No, I didn't. I never intended it to be a bribe. I didn't have any idea that it would be interpreted that way.

I didn't have any knowledge that it was a false deal.

Q. You even went to the trouble in 1954 of stopping one of your checks? A. Yes, sir.

Q. And making inquiry around, including from your banker, [339] to determine whether or not you should have a lease? A. Yes, sir.

Mr. Holohan: We are going to object to this. It is getting too leading.

The Court: Yes, it is a little leading.

Q. (By Mr. Whitney): Now, of course, you didn't know anything about the workings of the mind of Mr. Short at the time those checks were given in either of those years? A. No, sir.

Q. Now, Mr. Neely, in Counts VI, VII, VIII, IX, X, and XI, you were charged with unlawfully aiding and abetting and inducing Defendant Short to make certain entries in the books and records of the Pinal County Agricultural Stabilization Committee.

Did you have anything to do with making any of those entries? A. I most certainly didn't.

(Testimony of Rex L. Neely.)

Q. Did you ever discuss any of those entries with Short? A. No, sir, I didn't.

Q. Did you ever know that any of those entries, as far as you are concerned, were false?

A. No, sir, I didn't.

Q. Pardon me? A. I didn't, no.

Q. Now, then, Mr. Neely, did you ever have any agreement, [340] direct or implied, with Mr. Short, in which you and Mr. Short conspired in any manner to defraud the United States Government?

A. None whatsoever.

Q. Of course, you don't know anything about the workings of Mr. Short's mind?

A. No, I sure don't.

Q. But as far as you were concerned, you had no understanding? A. No, sir.

Q. Direct or implied?

A. No, sir, I did not.

Q. Did you know of anything at that time, as to whether Mr. Short was doing anything wrong?

A. No, I didn't.

Q. And only discovered it, as you stated, the latter part of December, 1956?

A. That's when I discovered it.

Q. Now, in all of these dealings that you had with Short, every one of them, all during these three years in question, did you rely on what Mr. Short did and told you? A. I did.

Q. Did you have any reason to believe that he was not telling you the truth?

A. None whatsoever. To my knowing. [341]

(Testimony of Rex L. Neely.)

Q. Now, Mr. Neely, in connection with the conspiracy indictment that you said you had nothing to do with.

Did you know that on or about the 19th of March, 1954, as charged in this indictment, that Short altered the amount of your 1954 acreage allotment on the official listing sheet of Pinal County Agricultural Stabilization and Conservation Committee, by lining out the figures 319.8, and inserting above it the figures 400.8? Did you know that?

A. I had no knowledge.

Q. Did you ever see the listing sheets?

A. I don't believe I ever did. I'm sure I didn't.

Q. Pardon? A. I never did.

Q. Did you ever see any of the records in that office? A. Never.

Q. Outside of what they handed you to sign?

A. That's correct.

Q. Now, it is charged that on or about March 30, 1954, Short signed the fictitious name W. R. Burns to a lease, by which 160 acres of land having the same legal description as Farm 595, you of course testified that you never knew that that was a fictitious name until December, 1956, is that correct?

A. That's correct.

Q. All right. Do you know anything about Farm 595? [342] A. No, sir.

Q. Did you ever hear of it before?

A. No, sir, I didn't.

Q. Did Short ever discuss it with you?

A. No, sir.

(Testimony of Rex L. Neely.)

Q. Then, of course, you testified you never examined any of the documents I am talking about, the records in the office of the Stabilization Committee down in Casa Grande?

A. That's correct, I never have.

Q. Now, it charges that one of the overt acts was on April 5, 1954, that you issued a check payable to Short for \$1620. You did that, didn't you?

A. Yes, sir.

Q. And you have explained how. On November 22nd, 1954, you issued a check payable to Short for \$1410. You did that, didn't you?

A. Yes, sir.

Q. Under the circumstances you described?

A. Yes, sir, for the Burns lease.

Q. That on or about the 18th of August, 1955, you signed Form 578, an official form of the office, showing 426.5 acres of planted short staple cotton, none destroyed.

Do you remember you already testified as to that?

A. Yes.

Q. And that you have already testified that your allotment [343] shown on the card and finally determined was 306.1 acres?

A. Yes.

Q. And that, together with the amount that you got of 70 and one-half acres from Short on the so-called Burns lease, that you destroyed enough cotton, you thought, to bring you within compliance?

A. Yes, sir.

Q. And Mr. Short never gave you any notice?

A. That's correct.

Q. But he did tell you you were overplanted?

(Testimony of Rex L. Neely.)

A. Yes.

Q. Now, on December 9, 1955, it is charged that you issued a check to Short for \$1,750. You did that, didn't you?

A. Yes, sir.

Q. Under the circumstances you have described?

A. Yes, sir.

Q. Now, that on October 3rd, 1956, you signed Form 578, an official form of the office, for short staple cotton, showing planted acreage of 477.7 acres, and you stated you believed when you signed that, either those figures weren't on there, or you didn't see them, you didn't examine them?

A. I don't recall seeing the figures there.

Q. And you accepted a short staple marketing card at that time showing planted acreage of 306.7?

A. Correct. [344]

Q. But that you didn't notice that particular one?

A. Yes, sir.

Q. And that is the cotton that you were intending to pay a penalty on if they had sent you the notice?

A. That's correct.

Q. The next charge is on or about December 1st, 1956, Short instructed Mathis to make up a new notice of allotment showing Neely had an allotment of 367.7 acres.

Did you know anything about that, his instructions to Mathis?

A. Nothing whatsoever.

Q. Did you ever discuss it with him?

A. No, sir.

(Testimony of Rex L. Neely.)

Q. When is the first time you learned about it?

A. I believe when this case, when this case came up.

Q. When this thing broke? A. Yes.

Q. In December, 1956? A. Yes.

Q. Then it is charged that on or about August or September, 1954, you requested the Agricultural Conservation Program for assistance for ditch lining practice, indicating the construction of the ditch would be commenced by you in September.

That has been explained by you, by the application in 1954, which somebody marked Cancelled.

A. The application was made in 1953, the fall of 1953.

Q. You did finally receive the \$1500 for that?

A. Yes.

Q. After sometime in September, 1954?

A. Yes.

Q. For the work that you had done between January and March, 1954? A. Yes, sir.

Q. The next is that in September, 1954, Neely made application for payment in the amount of \$1500. That you did? A. Yes.

Mr. Whitney: If the Court please, may we have the recess now?

The Court: All right, the Court will stand at recess until two o'clock.

(The noon recess was taken.) [346]

Tuesday, September 16, 1958, Two o'clock p.m.

The Court: You may continue.

REX L. NEELY

resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Whitney): Mr. Neely, handing you Government's Exhibit 23 in evidence, a check of the Treasurer of the United States for \$1500, dated October 6, 1954, and apparently for the 1954 AC program. Do you remember receiving that check?

A. Yes, sir, I do.

Q. And Exhibit Number 21, the deposit of that check on October 7th, 1954. Do you remember that?

A. Yes, sir, I do. [347]

Q. And that was for the 1954 practices?

A. Yes, sir.

Q. Do you remember receiving a check also in 1954, prior to this date?

A. Yes, sir, I do.

Q. For \$1500? Wait a minute, yes, for \$1500?

A. Yes, sir.

Q. And when was that, do you remember? If you remember?

A. It would be the first part of 1954.

Q. And what was that for?

A. It could have been the 1953 practice.

Q. Practice? A. ACP practice.

Mr. Whitney: I am finished with Mr. Neely. You may have him for cross examination. But may I, if the Court please, with permission of the United

(Testimony of Rex L. Neely.)

States Attorney, I have one more character witness, if he is here, that would like to get away.

May I withdraw Mr. Neely and put him on?

Mr. Hays: It is perfectly all right.

The Court: You may.

Mr. Whitney: Mr. Stapley. [348]

L. E. STAPLEY

called as a witness in behalf of the Defendant Neely, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Whitney): Will you state your name, please. A. L. E. Stapley.

Q. Where do you reside, Mr. Stapley?

A. I reside at—you want the home address, or just Phoenix, Arizona?

Q. That is all right. How long have you resided in this county?

A. In the county since 1901.

Q. That is about the time you were born, I guess? A. That's right.

Q. Are you acquainted with Mr. Rex L. Neely, the Defendant here? A. Yes, sir, I am.

Q. How long have you known him?

A. Well, I couldn't put the exact date, because I did business with his father, and when he went to school I know he helped summertimes, and then business dealings were started when he got married, approximately 13 years ago.

Q. Do you know his reputation in the com-

(Testimony of L. E. Stapley.)

munity in which [349] he resides for honesty and integrity?

A. We have always found, and I have always found him as good as his word, yes, sir.

Q. Do you know his reputation in the community in which he resides for truth and veracity?

A. I have heard nothing contrary.

Mr. Whitney: You may have the witness.

Mr. Hays: No questions.

Mr. Whitney: Thank you, Mr. Stapley.

(Witness excused.)

Mr. Whitney: Would you resume the stand, Mr. Neely.

REX L. NEELY

resumed the stand.

Mr. Whitney: You may cross examine.

Cross Examination

Q. (By Mr. Holohan): Now, Mr. Neely, I will show you what has been marked Government's Exhibit 12-G. When your counsel showed you that document, I believe you said you hadn't seen it before.

A. To the best of my recollection, I do not remember.

Q. Do you remember sitting with Mr. Johnson, and going over that matter on 12-G at some length?

A. (No answer.) [350]

Q. I will strike the question now, and you be

(Testimony of Rex L. Neely.)

thinking about that, and as we go along I will ask you about it again.

Now, with regard to your statement, which is Government's Exhibit 24, Mr. Neely, how long did you go over that statement? How long a period of time was it that you went over it?

A. Before initialing the changes, is that what you mean?

Q. Let's say from start to finish, from the time that Mr. Johnson and yourself met, and the statement was prepared, or was presented, rather, to you, including the markings, the changes, and the initialing, and all, what period of time was occupied?

A. There was several meetings with Mr. Johnson and Mr. Kennedy.

Q. With regard specifically to this statement, didn't the agent bring you the statement already prepared the agent being Mr. Johnson?

A. Yes, sir.

Q. Didn't he bring it to your house?

A. Yes, sir.

Q. Didn't you ask him to have the conversation with you in his automobile?

A. I was in his car, I believe.

Q. All right, at that time, then, on that occasion, how much time was consumed by you and him in going over that statement? [351] As a matter of fact, to refresh your recollection, it was about an hour and a half, wasn't it?

A. I didn't particularly notice the time.

(Testimony of Rex L. Neely.)

Q. It could have been?

A. It could have been, yes.

Q. On the several pages making up this Government's Exhibit 24, there are portions of it where we find lined out sections?

A. Yes, sir.

Q. Those were items that you did not agree to, and the agent lined out, and you initialed it?

A. Yes, sir.

Q. We find that on many of the pages here, don't we?

A. Yes.

Q. In other words, you have gone over this statement just prior to trial with your attorney, haven't you?

A. Yes, sir.

Q. All right. Now, if we may, on the ACP. Page 8, on the ACP. That would be Page 8 of Government's Exhibit 24. In that statement, they said:

"I have been shown——"

Supposedly you speaking here.

"I have been shown ACP forms on which——"

Excuse me. I will start again.

"I have been shown the forms in an ACP folder [352] in the ASC Office in connection with a 1954 ditch lining practice on my Pinal County farm. According to these documents I requested assistance on a land-leveling practice on May 24, 1954 and on May 27, 1954, I requested approval of change to ditch lining."

That was the way the document showed, wasn't it?

A. (No answer.)

Q. And to refresh your recollection there, I will

(Testimony of Rex L. Neely.)

show you 12-A, which was your application. That's what the document shows, isn't it?

This specific item here, it is dated—we are talking about 12-A now, the document appears to have been signed by you on May 24, 1954, does it not?

A. Yes.

Q. Or, at least, that is the date underneath your signature. Over in the corner under the Remarks section, it bears this, "Request for Change of Approval from First to Second Practice, 5/27/54."

A. Yes. That's right.

Q. Now, you are familiar with the document now?

A. Well, I see it here. I mean, I am not——

Q. This is about the fifth time that the matter has been gone over with you, isn't it?

A. Not this form, no. [353]

Q. What is this, only the third time? Once by Mr. Johnson, once by your counsel, and once now by me? A. Yes.

Q. All right. Now, your land leveling was actually a matter that you had pursued until sometime in June or July of 1954, wasn't it?

A. No, sir. My land leveling was near completion, as best I can remember, in February, the latter part of the February, the first part of March.

Q. Now, Mr. Neely, how could you be applying for land leveling then in May, when you had completed it in February or March?

A. I have no recollection of these dates on here. I don't know how they——

(Testimony of Rex L. Neely.)

Q. They came about? A. No, sir.

Q. Do you remember having any contact with people from the Bureau of Soil Conservation in 1954, in the summer at, which time your land was inspected first for need, then was inspected for the practice, you continued to level the land, but it didn't come up to their specifications, and they refused to approve it for payment?

A. Yes, sir.

Q. You recall that, don't you?

A. I remember portions of it, yes. [354]

Q. So that puts it in 1954, and it is actually into July.

I show you 12-B. The first time that they went out for an inspection of the particular practice that you were following, according to the application for land leveling certified as to its need in 1954, in July.

A. Yes, sir.

Q. Thereafter, however, they never certified to the payment, because you hadn't done it quite to their strict specifications? You recall that, don't you? A. Yes, sir.

Q. All right. All this time, then, supposedly you were heading for land leveling. When did you change to ditch lining?

A. It was suggested that I change to ditch lining.

Q. By whom? A. I believe Mr. Short.

Q. All right. Then you take it that he did the necessary entries to accomplish that?

A. I have no knowledge of what he did.

(Testimony of Rex L. Neely.)

Q. You have no knowledge of what he did?

A. Of what he did, correct.

Q. But this would have been sometime, then, in July of 1954, since you couldn't be paid for your land leveling, the suggestion came from Joe Short that you change to ditch lining? Is that your testimony? [355]

A. I don't understand.

Mr. Holohan: Read it.

(The last question was read.)

A. (By the Witness): I believe that it would be sooner than that, because as I recall it, we had the crop practically ready for cotton that year, and I believe it would be in the latter part of April, or the first part of May.

Q. (By Mr. Holohan): Are you sure you are talking about the same land leveling that I am? What land did you level in 1954?

A. What we call Number 4 there.

Q. That was leveled in 1954? A. Yes, sir.

Q. Did you plant cotton in that field?

A. Yes, sir.

Q. That is all the land leveling you did in Pinal in 1954?

A. I believe that is correct.

Q. All right. You say this was done when?

A. We started the land leveling I believe in February.

Q. I see.

A. I believe the contractor pulled in the field and started in February.

(Testimony of Rex L. Neely.)

Q. When did you first learn that this practice, that your land leevling had been not approved for payment by the Soil people? [356]

A. I couldn't give you a specific date.

Q. Was it after the cotton was already planted?

A. I couldn't answer that and be sure.

Q. As far as you are concerned, the document over there is correct, that you changed from land leveling to ditch lining in May 27?

A. That could possibly be, yes, sir.

Q. All right, that is your position?

A. Yes, sir.

Q. As of now, anyway?

A. As I recall, that was changed from land leveling to ditch lining.

Q. This ditch was already in, wasn't it?

A. I believe it was.

Q. At a time prior to the change, even?

A. I believe so.

Q. Now, let us forget about this ditch for a minute. You acquired this land in what year?

A. In the spring of 1953.

Q. In the spring of 1953?

A. I believe it was February, the latter part of January, the first part of February.

Q. In 1953? A. Yes, sir.

Q. You had entered into negotiations, or had an option prior to that time, didn't you? [357]

A. Option, no, sir.

Q. Had you entered into negotiations prior to that time, prior to January, 1953? A. No, sir.

(Testimony of Rex L. Neely.)

Q. All right, now, you put in a mile and a half of ditch on that land the first thing?

A. In 1953.

Q. Yes, 1953, and the latter part of 1953 and the early part of 1954? A. Yes, sir.

Q. That was a mile and a half of ditch that was lined anyway, ditch lining, is that correct?

A. The latter part of 1953 and the first part of 1954.

Q. All right. Now, it generally follows this same line as we have shown on the board, of D to F, and of C to B? A. Yes, sir.

Q. All right. We cut it off there. (Indicating on blackboard.) You were paid for that practice in April some \$1500, weren't you?

A. I believe that is correct.

Q. In other words, you got \$1500 for this practice here? A. Yes.

Q. There was actually some little foul-up in your having put in two applications for this same thing, wasn't there? [358]

A. As I remember the application for this part here was made in November of 1953.

Q. In November of 1953? A. Yes.

Q. And that these cancelled things that you have reference to, your counsel has shown you?

A. I believe that is correct.

Q. Eventually, however, you did get paid in April? A. Yes.

Q. About April of 1954 for this practice?

A. I think that is correct.

(Testimony of Rex L. Neely.)

Q. All right. Thereafter, this ditch was also placed in "A" to "B", this one right here?

A. Yes.

Q. "A" to "B"? A. Yes, sir.

Q. And that is what you applied for in this May date? A. I presume so.

Q. This ditch was in prior to the time you applied for it? In other words, by May 27th, the ditch had already been in?

A. I don't recall the date.

Q. You have stated that you don't know anything about Doyle Dunkin? A. No, sir.

Q. You don't know him? [359]

A. I do not.

Q. And your land is not in the Indian Reservation? A. No, sir, it is not.

Q. Did you ever have a talk with the Soil Conservation people in 1954 about your land leveling?

A. On this field here?

Q. Yes, Number 4.

A. I believe I talked to Ray Bates, who was the head of the——

Q. Of the office at that time?

A. Yes, sir.

Q. Was he the one that told you that your practice had been disapproved?

A. I believe, well, I don't know. I don't know whether it was he, or it was an engineer that—or a field man.

Q. They found fault with some of the land level-

(Testimony of Rex L. Neely.)

ing there? Anyway, it didn't come just exactly the way you wanted it done.

A. As I recall, time being the element at that time of year, to getting my crop in, the contractor finished his part of it on Friday, sometime Friday morning, I believe, or something.

Q. What month?

A. I believe it was in April.

Q. All right.

A. And I notified the office that we were ready for—— [360]

Q. Inspection?

A. Inspection, as I recall, and they said, well, we can't get out and check it until the following Monday.

Q. All right.

A. And I believe that I wanted to get the crop in, that, like I say, time being the element, with their suggestion that I switch from land leveling to ditch lining.

Q. Now it is their suggestion now, or is it Joe Short's?

A. Well, I believe they implied that it could be done that way.

Q. All right. Now, the Soil Conservation people said you could do it that way, the one you were talking to was Ray Bates, wasn't it?

A. Yes.

Q. Do I understand you that Ray Bates told you then to apply for lining for a ditch that was already in?

(Testimony of Rex L. Neely.)

A. No, sir, that is not correct. He didn't.

Q. All right. Then you were planting your cotton in April of 1954?

A. Yes, sir. In fact, in the first part of May.

Q. First part of May? A. Yes, sir.

Q. And it was sometime in that period, then, that you were told that your practice had been changed—strike that. Sometime in there that you were told that your practice had [361] been turned down, that it wasn't approved? A. Yes, sir.

Q. I hand you your application again. Your application shows the date of May 24th, 1954, in which you are applying for land leveling.

A. I have no knowledge—

Q. And by the 24th, you knew that you would be turned down, is that what I am to understand, but yet you went ahead and applied anyway?

A. I have no knowledge of these dates on here.

Q. When did you sign the form?

A. I do not know.

Q. When did you apply for this?

A. I can't recall.

Q. In other words, we are talking about \$1500, is what you were applying for. When did you apply for that?

A. I would think it would be in the first part of the year.

Q. All right. The early part of 1954 you received \$1500, and in October you received another \$1500, and in addition to that you received, what

(Testimony of Rex L. Neely.)

was it, 700 or 800 from Maricopa County in the same year?

Mr. Whitney: For what. I didn't hear that last question.

(The last question was read.)

Mr. Whitney: I object to that as immaterial, [362] on the grounds it is not charged in the indictment.

The Court: He may answer.

Mr. Holohan: You may answer.

A. (By the Witness): I believe that is correct.

Q. (By Mr. Holohan): How much was it from Maricopa? A. I believe it was \$750.

Q. \$750. You say you did not know that the maximum that you could receive in any one year was \$1500? A. At that time.

Q. Of course, this \$1500 applied to what we call a 1953 practice, so this is considered legitimate, isn't it? Your first 1500 in April? A. Yes, sir.

Q. This Mike Watson you spoke of earlier in your testimony is now deceased, isn't he?

A. Yes, sir.

Q. You, of course, never met the fictitious Mr. Burns, did you? A. No, sir, I didn't.

Q. Never had any conversations with him, never knew who he was? A. No, sir, I did not.

Q. At all times, according to your testimony, you discussed the terms of the cotton allotment and the lease with Mr. Short? A. Yes, sir. [363]

Q. At all times, Mr. Short represented himself as the agent for the Burns people?

(Testimony of Rex L. Neely.)

A. Yes, sir, that is correct.

Q. So far as you were concerned, you were dealing with Joe Short, agent for W. R. Burns?

A. I suppose that's the way you would put it.

Q. Now, except for the 1954 year, you never received a written lease, did you?

A. That is correct.

Q. And except for 1954, you never received a revised allotment notice showing your additional cotton allotment, did you?

A. I believe that is correct.

Q. The closest that we come in 1955 is to 18-A, where something is written in ink under the typed portion there, purporting to show 70.6?

A. Yes, sir.

Q. Who wrote that in there?

A. I have no knowledge who wrote that in that.

Q. When you got it through the mail, I take it that it was there?

A. No, I don't recall. I don't remember.

Q. You don't remember?

A. If it was there or not.

Q. Have you ever taken a look at the office copy? [364]

A. I have since this trial.

Q. You have seen the office copy, haven't you?

A. Yes, sir.

Mr. Whitney: Since the trial.

Mr. Holohan: Do you want to let him answer, Mr. Whitney.

(Testimony of Rex L. Neely.)

May this be marked as an exhibit for identification in the 11 sequence.

The Clerk: Government's Exhibit 11-G for identification.

(Said Document was marked for identification as Government's Exhibit 11-G.)

Q. (By Mr. Holohan): All right, I will hand you 11-G for identification. That is the office copy that shows the 1955 allotment notice, doesn't it?

A. Yes. This would be November 12, 1954. This would be for the 1955.

Q. For the 1955 crop year? A. Yes, sir.

Q. Well, that corresponds with your notice which is 18-A, isn't it? They are issued the same day? A. Yes. Yes.

Q. They are both signed by Elsberry?

A. Yes, sir.

Q. On 11-G, do you find any inked 70.6 under the notice? [365] A. No, sir, I do not. .

Mr. Holohan: At this time the Government offers in evidence Government's Exhibit 11-G for identification as 11-G.

Mr. Whitney: No objection.

Mr. Stanfield: No objection.

Mr. Holohan: There being no objection, may the document be received?

The Court: Yes.

The Clerk: Government's Exhibit 11-G in evidence.

(Said Notice was received in evidence as Government's Exhibit 11-G.)

(Testimony of Rex L. Neely.)

Mr. Holohan: May 18-A and 11-G be shown to the Jury, your Honor?

The Court: Yes.

(The documents were passed to the Jury.)

Q. (By Mr. Holohan): Now, Mr. Whitney has gone over the Marketing Cards with you. The rule is, before you can market your cotton, the gin requires you to produce a marketing card, doesn't it?

A. Or a number.

Q. Or a number, a card number? A. Yes.

Q. In 1955, in addition to your operations in Pinal County, you also ran an operation in Maricopa, didn't, you? [366] A. Yes, sir.

Q. Your counsel has made reference to it here in introducing documents pertaining to overplant penalty? A. Yes, sir.

Q. How much were you overplanted there?

A. I believe it was 9.8 acres.

Q. What was your total allotment in Maricopa?

A. 70.

Q. 70 point something?

A. Roughly 70 acres.

Q. All right. That was made up of your own land and leased land, wasn't it? A. Yes, sir.

Q. Your leased land in Maricopa County in 1955, plus land that you owned? A. Yes, sir.

Q. You formed a combination, what is known as a combination——

Mr. Whitney: If the Court pleases, I think that is immaterial, in Maricopa County.

(Testimony of Rex L. Neely.)

The Court: Why did you go into it then. Go ahead.

Q. (By Mr. Holohan): You formed a combination in 1955 in Maricopa County, didn't you?

A. Yes, sir.

Q. A combination in essence means that the farm units are [367] formed into one farm, so far as the Agricultural Department's records are concerned?

A. I presume that is their regulations.

Q. You were refused a marketing card in Maricopa County until you paid your penalties?

A. I paid a penalty in Maricopa County, yes, sir.

Q. Let me repeat my question to you.

You were refused a marketing card until you paid your penalties, weren't you?

A. That is correct.

Q. And then your counsel made reference to something about nevertheless some of your cotton was Maricopa County cotton, was ginned under your Pinal County, that Calcott, I believe you used the term?

A. Will you state that question again, please?

Q. Some of your Maricopa cotton during this period when you didn't have the Maricopa Marketing Card, nevertheless it was still ginned under the Pinal Marketing Card, wasn't it?

A. It was ginned at the same time, yes, sir.

Q. You were sent a notice sometime in September of your overplant condition?

A. Yes, sir.

(Testimony of Rex L. Neely.)

Q. In Maricopa. Excuse me. A. Yes, sir.

Q. And you paid the penalty, as we see by your check, in February of the following year? [368]

A. Yes, sir.

Q. Your overplant was approximately nine acres, you say? A. 9.8, I believe.

Q. Now, in the same year in Pinal County, how much were you overplanted?

A. I was never notified. I presume 15 to 20 acres. I thought I was 15 to 20 acres over.

Q. Now, you have seen the 578, the form which shows that you are substantially over that figure. It is more like 50 acres overplanted?

A. I have seen it since this trial has begun.

Q. Yes. Well, there was some discussion between you and the agents on the point too, wasn't there?

A. That is correct.

Q. Your recollection, or your opinion at the time was that you were not that much overplanted?

A. To my knowledge, I didn't think I was that much over, no.

Q. All right. How much did Mr. Short tell you you were overplanted, based on the 578?

A. He didn't give me a figure at that time.

Q. All right, on August 18th, 1955, you were into the office and as I believe you told your counsel that it would be your best recollection that the date was around August 18, 1955, the same as stated on the forms 578, which are 11-B and C? [369]

A. Yes, sir.

Q. About the 18th?

(Testimony of Rex L. Neely.)

A. I presume it was around there.

Q. All right, that year, in 1955, you were farming both long staple and short staple there in Pinal?

A. Yes.

Q. All right. Now, you were overplanted on both of them?

A. Those records indicate that.

Q. All right. You tell us you knew you were overplanted on the short staple, didn't you?

A. Yes.

Q. Because you figured you planted about 388?

A. Right.

Q. Now, how much did you think you were overplanted on long staple?

A. Well, I didn't know. I did not know how much exact acreage I was over.

Q. Well, you had a very small allotment that year, didn't you? A. Yes, sir.

Q. A matter of what, three and a fraction acres of cotton allotment for long staple?

A. Yes, sir.

Q. Now, when you would go to plant that acreage, how would [370] you figure out how much to put in there? You've got to buy seed to put in the ground, don't you? A. Oh, yes.

Q. And you have to map out a part of the ground to be planted? A. Yes, sir.

Q. How much did you think you had planted then?

A. I thought I planted around—well, I don't know.

(Testimony of Rex L. Neely.)

Q. All right. Do you find any fault with the measurement of 5.6 acres? A. No.

Q. That could well be, couldn't it?

A. It could well be.

Q. Now, did Mr. Short tell you you were overplanted on long staple?

A. I am not sure that he did. I am not positive that he did.

Q. Did you ask about your measurements?

A. No, sir, I did not.

Q. He just volunteered the information on short staple, is that what I am to understand?

A. Who volunteered?

Q. Mr. Short.

A. That I was overplanted?

Q. Yes. [371]

A. I presume I took it that way.

Q. You actually, in other words, paid for a so-called remeasurement of destroyed acreage about that same date, didn't you?

A. Yes, ten dollars in the office there.

Q. So you knew that the office was concerned, or Short was concerned that you were overplanted on Short Staple? A. I presume.

Q. But you don't remember any conversation whatsoever on the amount of your plant on long staple?

A. He could have told me that I was over on long.

Q. All right. He could have told you?

A. Yes.

(Testimony of Rex L. Neely.)

Q. Thereafter you did nothing about your long staple? A. Thereafter I did nothing?

Q. Yes.

A. I disked the ends off of all the fields, including the Pima. I disked the ends off the fields.

Q. How much of your long staple did you destroy? A. (No answer.)

Q. How much did you intend to destroy?

A. I didn't know exactly how much I was over, so I didn't know how much to destroy.

Q. Do I understand you correctly, Pima is a type of cotton that brings an even higher price than short staple, doesn't it, per pound? [372]

A. Right, yes, sir.

Q. A difference in support price of about double, isn't it? A. I don't know.

Q. Well, for 1955, the one you got somewhere around 33 cents a pound, and the other was up around 60 cents, isn't that correct?

A. I believe that is correct.

Q. So in 1955 you didn't know how much long staple cotton you were trying to destroy?

A. I never received a notice.

Q. I know that. But you said you disked the ends of the fields? A. That is correct.

Q. Did you destroy both Pima and short staple?

A. Yes.

Q. All right. How much long staple did you intend to destroy?

A. Well, I didn't have a set figure in mind.

Q. All right. You never paid any attention to

(Testimony of Rex L. Neely.)

the entries on your marketing card which showed how much you were planted, purportedly showed how much you were planted, and how much you were allotted?

A. That is correct. In what year? [373]

Q. 1955, 1956, 1954, any of them.

A. That's correct.

Q. So you never paid any attention to any of the years, then, or did you just check 1954?

A. I don't remember checking them at the time, any time.

Q. All right. Now, in 1956 you received an allotment notice which gives you your original allotment, the allotment for that Pinal County farm.

Thereafter, did you not receive a revised allotment notice bringing the total up to what you thought you had secured from Burns?

A. No. I am not sure that I did. Do you mean the white copy?

Q. Yes, if you have a white, or a yellow, or any other number, I would be glad to see it.

A. No. I am not sure that I have received a revised copy.

Q. Well, this 19 for identification, or this 19 you have identified for your counsel, that is the one you turned over to the agents, wasn't it?

A. This is the Notice of Allotment, yes.

Q. That is the one you turned over to the agents, isn't it?

A. I believe so.

Q. That is the one that your counsel had you identify awhile ago, isn't it? [374]

(Testimony of Rex L. Neely.)

A. Yes, sir.

Q. In other words, this one is dated December 1st, 1955, sent to the farmer telling him what his allotment for the coming year will be, for the 1956 crop year, for Upland cotton, you are going to have 306.7 acres of cotton allotment? A. Yes, sir.

Q. That is what these notices are designed to do, isn't it? A. Yes.

Q. All right. Now, you wanted to get additional allotment over and above your 306.7, so you went to Short about the Burns place, is that correct?

A. That is correct.

Q. Now, that year you were only able to secure 60 acres of cotton allotment, wasn't it? When I use these terms "60", if it is 60 point something or other, I am not going to hold you to the exact fraction.

A. Short said that Burns had an allotment of 60 acres, short staple allotment.

Q. About 60 acres? A. Yes.

Q. Thereafter, did you ever receive any notice similar to this which would show that you had an allotment of 366.7 acres of cotton allotment?

A. No, sir, I don't believe I did. I can't find it, anyway. [376]

Q. In other words, you have searched your records, haven't you?

A. I gave them all the records that I could find, or thought of at that time.

Q. Incidentally, where did this sublease come from?

(Testimony of Rex L. Neely.)

A. As I had stated before, I overlooked that part of it. I mean, I forgot to give it to the agents.

Q. It was on that bureau drawer there, or not bureau, a buffet drawer where you kept your papers, wasn't it?

A. I believe so.

Q. And it was in that same place?

A. I don't know whether it was in the same drawer or not.

Q. That is this Defendant's Exhibit I. Mr. Burns' signature, does it appear thereon?

A. No, sir, it does not.

Q. Joe Short's signature as witness?

A. No, sir.

Q. And that other gal's signature, as witnessing?

A. No.

Q. But this was all done at the same time, wasn't it?

A. I got this at the same time I got the lease.

Q. You got this at the same time you got the lease. All right. Now, in 1956, how much did you figure you had planted in 1956?

A. I didn't know how much I had planted. I knew I was—I had——

Q. You knew you were substantially overplanted?

A. I knew I had some overplanting.

Q. Even including Burns', you would have had an allotment of 366, and you were measured 100 acres over that, weren't you?

A. I was told that it was measured over, yes. I didn't know.

(Testimony of Rex L. Neely.)

Q. How much did you think you had planted?

A. I didn't.

Q. You didn't know how much you were planted?

A. Not for sure, no.

Q. How much did you intend to plant?

A. I don't know that.

Q. You don't know that either. All right. Here is 11-D. It shows you were measured 477 acres, 477.7 acres of cotton allotment. Not cotton allotment, acres in cotton. Excuse me. And your allotment, even with the Burns thing, was 366 something.

A. Yes, sir.

Q. Now, we have heard that Mr. Short was supposed to have told you that you were substantially overplanted around June or July of 1956.

Do you remember such a conversation with Joe?

A. No, sir, I do not.

Q. You don't remember such a conversation, or are you [377] willing to go so far as to say it did not happen?

A. In June?

Q. In June or July. We will even go to August.

A. I believe that is correct.

Q. In June, July, or August, Short never told you you were overplanted?

A. No, sir.

Q. All right, did you know that he had had a stroke?

A. I had heard that he had a stroke, yes, sir.

Q. All right. When you went to the office, there was no discussion about your planting condition?

A. No, sir, I inquired about my planting condition.

(Testimony of Rex L. Neely.)

Q. And what were you told?

A. I was told that my file, or my measurement was not at the office.

Q. Oh. When did you first inquire?

A. I can't specifically set a date. I know I was in there along in June and July.

Q. You were in the office in June or July to find out what your planted condition was?

A. Also about my ACP practice.

Q. You were doing another ditch here from "B" across to here (indicating on diagram)?

A. Yes, I believe that is so.

Q. You never received any information as to your planted [378] condition, as to your measurements?

A. Not until way late in December.

Q. Way late in December?

A. December 28th, I believe.

Q. You were told then, whenever you went in there in June or July, that your form could not be found?

A. That is correct.

Q. By whom were you told?

A. I believe it was either Mrs. Golsten or H. L. Mathis.

Q. Did you contact Short at all about the condition of your measured acres?

A. No, he was not in the office, as I recall. I don't remember seeing him.

Q. At the time that you received your Marketing Card for 1956, you knew you were substantially overplanted, didn't you?

(Testimony of Rex L. Neely.)

A. I knew I was overplanted, yes, sir.

Q. When you saw Short in December of 1956, what was your conversation with him?

A. On what date?

Q. Well, I believe any date in December, did you see Joe Short?

A. I believe I saw him on the 19th.

Q. All right. What did you see him about?

Mr. Whitney: 19th of what, Mr. Neely?

The Witness: 19th of December, 1956. [379]

Q. (By Mr. Holohan): What did you go to see him about?

A. I was in the office not necessarily to see him, but I was interested in my ACP program. My soil bank. And also to find out about my overplant, my planting.

Q. To find out about your overplant, all right. Let us skip the soil bank and the ACP, and go to the overplant.

What was the conversation between you and Short on that?

A. He met me in the outer office there. Asked me if I had been measured, and I told him——

Q. This is in December of 1956?

A. That is correct.

Q. He asked you if you had been measured?

A. Asked me if I had been measured.

Q. Yes. That is something that happened way back in June, isn't it?

A. That is right.

Q. Go ahead.

(Testimony of Rex L. Neely.)

A. And I told him to the best of my knowledge that I hadn't. He stated that——

Q. You said you hadn't been measured?

A. Well, I am getting a little ahead of my story there. He said there was some investigators checking around, and he wanted to know if they had been out to my place, and I told him that as far as I knew, they hadn't. He just wanted to [380] know if they had measured the place, and I told him——

Q. He wanted to know if they had measured the place. All right, go ahead.

A. And I am not sure at that time he told me what to do about my overplant, or not.

Q. Did you tell him you were overplanted?

A. I believe I told him I was overplanted; at that time I thought I was overplanted.

Q. Did he get your form, the 578, to look at?

A. No, sir, he did not.

Q. Now, these 578's again, for instance, like 11-D. A. Yes, sir.

Q. Your measured acreage over in the various columns here, the final one being "G" here, showing your final measured acres, when you go in there and sign up, you haven't been paying any attention to that, huh?

A. I didn't pay any attention to this one, no.

Q. You didn't pay any attention to this one, being 11-D in 1956, and I take it you didn't pay any attention to the one in 1955?

A. I don't believe so, no, sir.

(Testimony of Rex L. Neely.)

Q. When Mathis and Wolf came out to measure your place a few weeks later, in December, did you ever ask them whether they had talked to Short before they came to measure your place?

A. I asked them that on the day, I believe on the day that [381] they came to measure my farm.

Q. All right. What did you say to them?

A. I wanted to know if they knew of the Burns allotment.

Q. Did you ask them whether they talked to Short?

A. I believe I asked them if they had seen Mr. Short.

Q. All right. Had Joe Short suggested to you on this December 19th meeting that you request a remeasurement?

A. I am not positive of that, no, sir.

Q. Well, they have it in your statement here, which is Government's Exhibit 24. Short was there at the time,—I am reading from the statement:

“Short was there at the time, and he reminded me that I was overplanted, and asked me if I had plowed up any cotton. I told him I had not destroyed any. He said there was an investigation going on, that I had better request the measurement, and pay the penalty of the excess cotton.”

Do you remember it as happening that way?

A. It could have. That may be.

Q. Is that what you told Mr. Johnson had happened?

A. I believe I told him.

Q. You believe you told him that?

A. Yes.

(Testimony of Rex L. Neely.)

Q. All right. "However, I did not plow up any cotton after talking to Short on the 19th, because I had already [382] started the picking by that time, and it was too late."

Did you tell Johnson that?

A. Yes, I believe so.

Q. And that was correct, wasn't it? This was well into December? A. Yes.

Q. Now, your counsel made reference again to the statement, Government's Exhibit 24, in which this sentence was read, and I didn't get an answer to that:

"I guess I thought I might get by without plowing up my excess cotton in 1956."

Did you make such a statement to Mr. Johnson?

A. I made that statement, I believe I said that I thought I might get by without plowing up any of my cotton until a penalty was assessed me.

Q. Is that the way you told it to him?

A. I am not sure. I wasn't sure.

Q. But that's what you meant?

A. Yes, sir.

Q. Regarding this penalty business, then, you were at all times willing to pay the penalty, any penalty that was assessed against the land?

A. Against the land.

Q. Well, assessed for the overplant?

A. Yes, I paid an overplant in Maricopa County, and I would have—— [383]

Q. I mean, you were willing, then, to pay the penalty for the 1956 overplant, too? A. Yes.

(Testimony of Rex L. Neely.)

Q. In other words, the answer to your last question is—— A. Yes, sir.

Q. All right. Then the only reason that you didn't fill out the forms that your counsel introduced in evidence is because he wouldn't let you do it, isn't that right? A. That is correct.

Q. Because you didn't have anything to hide, did you? A. No, sir.

Q. That all the information that could have been put into those forms would be similar to that which you are telling us here today. It would have been similar to that that you already told the agents? A. Yes, sir.

Q. Now, you paid \$20 an acre in 1955 for the short staple extra allotment from Short?

A. Yes, sir.

Q. That was a bargain price in 1955, too, wasn't it? A. Yes.

Q. It was not uncommon for people to pay \$60 an acre to lease land for combination purposes, was it?

A. No, sir. I don't know exactly what the market price was. [384]

Q. You say you don't know what it was. Wasn't it a matter of common knowledge down in Pinal County? A. Not to my knowledge, no.

Q. It was not to your knowledge?

A. Not to my knowledge, no. I knew some that had gone for \$35 and \$40.

Q. So you knew of specific instances when they

(Testimony of Rex L. Neely.)

were drawing \$15 to \$20 more than you were having to pay? A. Yes, sir.

Q. So in 1956, you had to pay \$25 an acre?

A. Yes, sir.

Q. And again you have testified you considered that a bargain?

A. That is the price that the Burns farm allotment went at.

Q. And you considered they were charging too little for it, didn't you say that?

A. I stated that I thought it was worth more, yes.

Q. And that is why this extra money was thrown in the till? A. Yes, sir.

Q. Again referring to your statement on that matter:

"To the best of my recollection at this time, the rate asked by Short for 1956 was \$25 per acre, and I added \$250 to the check to assist Short with [385] hospital expenses, as I had heard that his wife was going to have an operation. I was willing to pay the higher price per acre because I left that the allotment was worth more in 1956 than I had been paying."

Did you tell Mr. Johnson that?

A. Yes. I believe that is correct.

Q. Do you agree with that at this time?

A. Yes, I believe it is worth more than I had been paying.

Q. Did you also add \$250 to the check to assist Short with hospital expenses?

(Testimony of Rex L. Neely.)

A. I added \$250 to the check because I felt that the cotton lease was worth more than that.

Q. Did you tell the agent you had added the \$250 to assist Short with his hospital expenses?

A. I may have.

Q. All right. Approximately how many times were you interviewed by Mr. Johnson, either alone or in company with Mr. Kennedy?

A. Two or three times.

Q. It would be a lot more than that, wouldn't it?

A. Possibly, yes.

Q. There was two times in January alone, weren't there? A. Three or four.

Q. And probably five or six?

A. Well, I never kept track of them, no, sir.

Q. All right. Now, in these years when you had the conversations with Short about getting the extra allotment, particularly the years 1955 and 1956, I will start with 1956, this is for the crop year 1956, for which you paid him in December of 1955.

A. Yes, sir.

Q. Now, when you paid him in December of 1955, you had already received your allotment notice for the 1956 crop year, showing what your allotment was, hadn't you?

A. I believe that form showed that.

Q. Yes. It is dated December 1st, and to the best of your recollection, you had already received that before you paid Short for the extra allotment that you were to get for 1956?

A. The dates indicate that, yes.

(Testimony of Rex L. Neely.)

Q. Is that to the best of your recollection, too? Do you find any reason to disagree with the dates at all?

A. Well, when, I believe I called Mr. Short at the office, and asked him sometime prior to this.

Q. Sometime prior to December 9th, 1955?

A. Yes. If the Burns farm was going to be available for lease.

Q. And having received an affirmative answer— **A.** He didn't at that time.

Q. I see.

A. Stating that he had to get in contact with Mr. Burns [387] and find out if it was available, and, if so, how much.

Q. Now, in 1955, or 1954, for the crop year 1955, your check is dated in November of that year?

A. Yes, sir.

Q. Now, do you recall whether you had already received your allotment notice for the 1955 year by that time? **A.** No, I do not recall.

Q. I will hand you the allotment notice for that year, Government's Exhibit 18-A, which is dated November 12, 1954. **A.** Yes, sir.

Q. All right, did you pay Short for allotment before you got your notice, then?

A. No. This is November 12th.

Q. And this is November 22nd.

A. And November 22nd.

Q. Then, to the best of your recollection, you had your allotment notice, and then you paid Short for extra allotment, is that correct?

(Testimony of Rex L. Neely.)

A. For the Burns lease.

Q. For the Burns lease. Then if you already had your allotment notice, then this ink, of course, was placed on there sometime thereafter, wasn't it?

A. I don't know what time it was placed there. I don't recall.

Q. Did you place it on there?

A. No, sir. [388]

The Court: We will have our afternoon recess.

(Recess.)

The Court: You may continue.

Q. (By Mr. Holohan): During the recess, Mr. Neely, you may have had a little chance to reflect, and so forth. Are you satisfied with your testimony on the ACP that you have given me?

A. In reference to what?

Q. 1954.

A. Well, it is a little hazy. I mean, that covers lots of things.

Q. In other words, according to your version on your land leveling, you have an application being made for land leveling practice which was already finished, and the documents, the file, show inspections having been made sometime in the summertime?

A. Well, if they indicated that, it isn't to my knowledge.

Q. So, in other words, your land leveling was done early in 1954, and I believe you stated the month as April when it was finished. In fact, you were planted in April, 1954?

(Testimony of Rex L. Neely.)

A. I don't know whether it was completed, practically through.

Q. You were practically through planting in April, 1954? A. Yes. [389]

Q. This is 11-E, which is a notice of farm acreage allotment for the year 1956, but it was dated December 1st, 1956. A. Yes, sir.

Q. Do you remember Mr. Mathis, H. L. Mathis, testifying earlier in the case about the preparation of that notice? A. Somewhat, yes.

Q. Did you ever receive the white copy of that?

A. I couldn't swear to that. I could have, and it could have been misplaced. I must have, though.

Q. You must have? A. Yes.

Q. Why?

A. Because this is a duplicate copy of it.

Q. That is dated December 1st, 1956. You had received your notice of cotton allotment for the 1956 crop year in December of 1955, right?

A. Yes, sir.

Q. Now, we have this one which Mathis has described as being made out at the direction of Joe Short in December of 1956, or around that period, November or December.

A. I know nothing of it. I don't know how come it was, I don't know anything that went on in that office.

Q. Did you get the white copy, is all I am interested in?

A. I can't swear to it. I can't find it, if I did.

Q. That would be an unusual thing, to receive

(Testimony of Rex L. Neely.)

your revised [390] notice while you were picking the 1956 crop, wouldn't it?

A. It seems to me to be, yes.

Q. It would be unusual, wouldn't it?

A. Yes.

Q. Then you have never been able to find a white copy that would correspond to this?

A. If one was mailed, no.

Q. To the best of your recollection, do you ever remember receiving such a copy?

A. I can't—I just don't know.

Mr. Holohan: Your witness.

Redirect Examination

Q. (By Mr. Whitney): Just a question or two, Mr. Neely. You never got paid for land leveling practice in Pinal County for the year 1954, for land leveling practice?

A. No, sir, I don't believe I did.

Q. But you did some land leveling in the early part of 1954?

A. Yes. We leveled Field Number 4.

Q. And wasn't that turned down as being sub-standard? Do you know what I mean by sub-standard?

A. Yes. It could have been, yes, sir.

Q. Well, it was turned down, anyway? [391]

A. Yes, sir, it was turned down.

Q. By whom?

A. I can't recall the field man's name.

Q. Did he talk to you about it?

(Testimony of Rex L. Neely.)

A. It was either he or Ray Bates, I don't recall which one.

Q. Who is Ray Bates? A. He is the head.

Q. Head of the office? A. ACP office.

Q. ACP Program? A. Yes.

Q. Well, whoever talked to you, what did they tell you was wrong with them, or if you remember?

A. As I recall, we had to do a little more work on it.

Q. And it was too late to do it?

A. No, it wasn't too late, it was that I just wanted to get the crop in as soon as possible, and not wait on the rechecking of the surveyors.

Q. In other words, if you had done that little more work that they required, then waited for them to check on it again, it would be too late to have planted your crop, is that what you mean?

A. It would have been a later crop, yes.

Q. Now, with reference to this exhibit that Mr. Holohan asked you about, Defendant's Exhibit F in evidence, which is [392] a letter dated October 11, 1957, from Mr. Elsberry, with the forms attached, do you remember bringing that letter and those forms to my office?

A. Yes, sir, I do.

Q. Do you remember what I said to you at that time?

A. You said, "Let me take care of this," I believe.

Q. In other words, didn't I tell you that the

(Testimony of Rex L. Neely.)

indictment had been returned, and not to sign anything? A. Yes, sir, that is correct.

Q. I think you testified on direct examination that in 1953, after the destruction of some cotton, that you had thought you were in compliance, is that correct? A. 1953?

Q. No, 1955. A. Yes, sir.

Mr. Whitney: That is all.

Mr. Holohan: We have nothing further.

The Court: That will be all.

Mr. Stanfield: No questions of this witness.

(Witness excused.)

Mr. Whitney: I call Mr. Davis. [393]

TOM DAVIS

called as a witness in behalf of the Defendant Neely, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Whitney): Will you state your name, please? A. Tom Davis.

Q. And you are the office manager of the Stabilization——

A. Pinal County Agricultural Stabilization and Conservation, yes, sir.

Q. At Casa Grande? A. Yes.

Q. And you have charge of all the records there?

A. Yes, sir.

Q. And have you the records for 1953 and 1954, with reference to ACP practices?

(Testimony of Tom Davis.)

A. I have the 1954.

Q. And those records are part of the records kept in the ordinary course of business?

A. Yes, sir.

Mr. Whitney: May I have these marked just for identification purposes, for the record.

(Documents marked for identification.)

Q. (By Mr. Whitney): Mr. Davis, for the purpose of the [394] record here, I am handing you Defendant's Exhibits N, O, P, and Q for identification.

Those are the records that you testified were part of the records of the office?

A. Yes, sir.

Q. At Casa Grande? A. Yes, sir.

Q. And they are kept in the ordinary, I mean, in the regular course of business of that office?

A. Exhibits O, P, and Q, yes, sir.

Exhibit N is an outdated performance handbook which is still retained there, but it is not a portion of the official records.

Q. But it is in use, isn't it?

A. It was no longer used. It is merely being retained as one that was used.

Q. But it was used in the ordinary course of business? A. Yes, sir.

Q. And it was in the regular course of business to keep those documents there in the manner they are kept? A. These documents?

Q. Yes, sir, that is, O, P, and Q?

A. O, P, and Q, yes, sir.

(Testimony of Tom Davis.)

Q. How about N at the time?

A. At that time. At that time, I couldn't say, sir. [395]

Q. What time did you say that you first went there to work? A. February of this year.

Q. February of 1958? A. Yes, sir.

Mr. Whitney: That is all.

The Court: Is that all from this witness?

Mr. Whitney: I offer Defendant's Exhibits N, O, P, and Q in evidence.

Mr. Holohan: Objection. Absolutely no foundation.

Mr. Whitney: Well, that's right. Probably you are right about that. I will get that later. That's all Mr. Davis.

Mr. Hays: May this witness be excused?

Mr. Whitney: I think so.

The Court: You are excused.

(Witness excused.)

Mr. Whitney: That is all.

Mr. Stanfield: If the Court please, at this time I would like to request an early recess on the basis that Mr. Short, whom I planned to call as a witness this afternoon, is not feeling too well, of course, with the Court's indulgence.

The Court: All right. We will suspend until ten in the morning. Keep in mind the Court's admonition. [396]

(Thereupon an adjournment was taken to the following morning, Wednesday, September 17, 1958, at ten o'clock a.m.) [397]

Wednesday, September 17, 1958

Ten O'Clock A.M.

Court convened pursuant to adjournment.

The Court: You may continue with the trial of this case.

Mr. Stanfield: I call Ralph Ashburn.

RALPH ASHBURN

called as a witness in behalf of the Defendant Short, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Stanfield): What is your name?

A. Ralph Ashburn. [398]

Q. Where do you live? A. Casa Grande.

Q. How long have you lived there?

A. I have been there since 1941.

Q. What is your trade or occupation?

A. In the crop finance business.

Q. I might ask with whom?

A. What's that?

Q. With whom are you employed?

A. Casa Grande Cotton Finance Company.

Q. Are you acquainted with the Defendant here, Joe L. Short? A. Yes, sir.

Q. How long have you known Mr. Short?

A. I have known him since he has been in Casa Grande, I believe 1953 or 1954. 1953, I believe it is.

Q. Is there any particular capacity in which you have known him?

A. Yes, in financing the crops in that area, and

(Testimony of Ralph Ashburn.)

particularly cotton, we have quite a little dealings with the triple A office on allotments and acreage there in respect to crop financing.

Q. Do you know Mr. Short's general reputation in the community for truth and veracity?

A. Yes, I do.

Q. And what is that reputation, good or bad?

A. Very good, so far as I know, yes. [399]

Q. Do you know Mr. Short's reputation in the community for honesty and integrity?

A. Well, I think it has all been very good, as far as any dealings with him.

Mr. Stanfield: No further questions.

Cross Examination

Q. (By Mr. Hays): Does the Defendant Short's brother have an interest in that company you work with?

A. No, sir, he has no interest.

Q. Is he employed there?

A. He is employed, yes, sir.

Mr. Hays: That is all.

The Witness: He isn't employed by the Casa Grande Cotton Finance Company, I might add. He is with the Gin Department.

Mr. Hays: That is all.

Mr. Whitney: No questions.

Mr. Stanfield: May this witness be permanently excused?

The Court: He may be.

(Witness excused.) [400]

Mr. Stanfield: Mr. Short, please.

JOE L. SHORT

Defendant herein, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Stanfield): Will you state your name, please. A. Joe L. Short.

Q. You are the Defendant Joe L. Short in this case? A. Yes.

Q. Mr. Short, can you hear me well enough?

A. Just barely hear you, Mr. Stanfield.

Q. You were one of the defendants, or you are, are you not? A. Yes, sir.

Q. Are you married, Mr. Short?

A. Yes, I have a wife and two daughters, one of them 13, one of them 15.

Q. Where do you live?

A. I live at a public housing project between Casa Grande and Coolidge.

Q. Where were you born, Mr. Short?

A. I was born in Oklahoma. [401]

Q. Where did you grow up?

A. I was raised in Oklahoma.

Q. You were employed, I believe, by the Pinal County ASC Office during the years 1953, part of 1953 and 1954, 1955, and most of 1956?

A. Yes.

Q. And what employment did you have with this office?

A. I started as a clerk, and among my other

(Testimony of Joe L. Short.)

duties, I was put in charge of the ACP in 1953, and then about in May, 1954, I became the office manager.

Q. When you worked for the ASC office, indirectly you worked for the Department of Agriculture, did you not? A. Yes.

Q. Had you previously to 1953 been employed by the Department of Agriculture? A. Yes.

Q. Where, and in what capacity?

A. In Stevens County, Oklahoma. I think I started there in 1938 as a clerk on the Range program, and later I was made a permanent employee, and worked there until 1940, when I went into the Army.

Q. Were you eventually separated from the Army? A. Yes.

Q. Do you recall the circumstances of your separation from the Army? [402]

A. Yes, sir. I had a jeep accident, and was in the hospital for awhile, and went before a board of officers, and they retired me from the Army, and discharged me without pension.

Q. When did these events occur?

A. In 1943.

Q. I didn't hear you. A. In 1943.

Q. Did you receive an honorable discharge, or otherwise? A. An honorable discharge.

Q. Were you subsequently employed in something besides the Army, then?

A. Yes. After I came out of the Army, I worked as a well logging engineer, as a salesman, both at

(Testimony of Joe L. Short.)

home and traveling on the road, and then worked in a woodworking shop, a cabinet shop.

Q. What is the extent of your education, Mr. Short?

A. I have about a high school education, and two years of college.

Q. Now, specifically what was your job with the ASC office when you first were employed in 1953?

A. First was as a clerk, and I was also put in charge of the ACP program, among other duties.

Q. How long were you in charge of that program?

A. Well, the ACP was a pretty good job, [403] I mean, there was lots of work to do, and the cotton allotments come on, and it was decided that they would hire somebody else, that is, the office manager decided that we would hire somebody else, and for awhile she worked under me, and then the ACP program was turned over to her.

I think I was in charge of the ACP program up until the first of May, 1954.

Q. Now, what was your salary as an employee of the Department of Agriculture in these jobs, Mr. Short?

A. I started at \$275 a month, and then when I was made office manager, I was getting \$345 a month, and then in July, 1956, I think that is the date, it was raised to \$450 a month.

Q. Now, would you by way of explanation, so that the Jury may have an opportunity to under-

(Testimony of Joe L. Short.)

stand the situation, briefly explain the function of the ASC Office, if you know.

A. Well, the ASC Office goes back, and it is a line of temporary agencies. It started in the early thirties.

At that time it was called the Bankhead Plan.

Mr. Holohan: We will object to going into all this. We believe it is immaterial at this time.

The Court: All right, sustained.

Mr. Stanfield: If the Court please, I would like to have this witness testify on defining what the ASC Committee is.

The Court: All right, during the time he was there. [404] We can't go clear back into the thirties.

Q. (By Mr. Stanfield): Mr. Short, during the period you were so employed as office manager, briefly would you outline the organizational plan of the ASC?

A. Well, the office manager hires the employees of the County Office, and he is in charge of several different programs.

Among those was the ACP program, the cotton program, the cotton marketing quota program, the emergency wool, the CCC loans and credits, and sometimes we had an emergency feed program.

And then he had to administer the administration of the office, including budgets and salaries, and stuff like that.

Q. Do you recall during your stay there who the County Committeemen were?

A. Yes, sir. When I first went to work, it was

(Testimony of Joe L. Short.)

Mr. Robert Hamilton, John Beggs, and Rodney Elsberry.

In 1954 it was changed, and Johnnie Beggs, Rodney Elsberry, and Henry D. Haley were the County Committee until the time I resigned.

Q. Would you briefly describe what your particular duties as office manager were during the time you were so employed?

A. Well, of course, as I said before, I was in charge of all these programs. Part of the time, I delegated part of the [405] authority to somebody else, but I wasn't a policy maker.

The County Committee is the policy maker. So when the County Committee decided what would be their opinion on a certain case, if other cases come up I could handle it in the same way.

Q. Now, with respect to the cotton allotment program, I believe you said you were responsible for that, for the administration of that program, did you not? A. Yes.

Q. Briefly, but specifically, what were your duties in connection with that?

A. Well, of course, the cotton allotment program comes down from the State Committee. As far as the County Office is concerned, I had to check the County total allotment to see if it was what we thought was correct.

Then the County Committee decided how much they would put into a reserve. The rest of it I will probably call a computed acreage allotment. Our allotment, that part of the allotment was divided

(Testimony of Joe L. Short.)

among the farms on different formulas, and these formulas resulted in a factor which was applied to the different deals that went to make up this formula.

Then the County Committee gave me a formula for the reserve. I added that to the farms' allotment, and then the County Committee had to approve all of it.

Then we made the cotton allotment notice. [406] They had to approve those. Of course we sent those cotton allotments out.

After that, there is time for appeal, and on an appeal they would usually come into the office and talk to me, most of the time. Once in a while they would talk to somebody else, and come to me later.

Some of those appeals went to the County Committee. Some of those went to the Review Board.

If it was going to the Review Board, we had certain forms to make out.

If it was going to the County Committee, I would make notes and explain it to the County Committee, and lots of times have the farmers come before the County Committee.

Let's see. About the next thing was the Reviewing Committee.

I sat with the Reviewing Committee, and in fact transcribed all of their hearings. I made their determinations out, in fact, their findings and determinations, and that had to go out.

At about that time, the farmers were changing their croplands, or buying new farms, leasing new

(Testimony of Joe L. Short.)

farms, or something like that, and then you get into the reconstitutions.

And also in that county we had a release and reapportionment that was coming up at that time.

And that goes on until it is time that the cotton [407] has been planted. Then we started measuring.

Q. You spoke of reviews and appeals, Mr. Short.

Have you known in the various years that you were office manager, how many appeals were heard by the Review Committee in your county?

Mr. Holohan: I object to that as immaterial.

The Court: Sustained.

Q. (By Mr. Stanfield): You were speaking, Mr. Short, about the measurement. What time of year is the first measurement usually done?

A. Well, usually it starts in June. As soon as school is out.

Q. Who does the measuring?

A. We hired some part-time employees, and, of course, the wages that we could pay, we couldn't hire engineers, and stuff like that, but we hired high school boys most of the time.

Q. Were there instances ever when the measurements were incorrect?

A. Well, in the first month, of course, when you are hiring a new bunch of measuring boys, you are going to make some mistakes in the first month. I would say 25 percent of them have mistakes in them.

Of course, the regulations say we check them, so

(Testimony of Joe L. Short.)

we checked them, so after the first month I imagine the mistakes would be 10 percent, or less. [408]

Q. During the years in which you were the office manager, what was your annual budget, if you know?

Mr. Holohan: I object to that as immaterial.

The Court: I don't see the materiality of it. What is the purpose?

Mr. Stanfield: Your Honor, a great deal of the Government's case is centered around the material contained on government forms which were processed in this particular office. And I would like to determine the incidence of mistakes, if they could be accounted for in that manner.

Mr. Holohan: I don't see what the budget has to do with mistakes.

The Court: You mean they didn't have money enough to employ competent personnel? Is that what you want to show?

Mr. Stanfield: Yes, in part, your Honor.

The Court: What is the other part?

Mr. Stanfield: In other words, I am not trying to attribute everything to a low budget, or improper personnel, but I would like to go into the fact he did have personnel trouble.

The Court: Ask him about that, then.

Q. (By Mr. Stanfield): Now, in connection with the operation of the office, Mr. Short, did you have personnel trouble?

A. Yes. Let me give you a figure. Say we could

(Testimony of Joe L. Short.)

only pay [409] about \$250 a month, or maybe \$275, as I started in with the office on.

It was hard to hire a college engineer, or something like that. We had to get the people, the best that we could get.

Q. Did you have a considerable turnover as a result of that problem? A. Well, yes.

Q. Going directly to the question of Mr. Neely, do you know Rex Neely? A. Yes, sir.

Q. Do you remember when you first met him?

A. I think the first time I met him was in the fall of 1953, but I don't know exactly what the occasion was. It was in the office, as far as that is concerned.

Q. Do you have any recollection of the next meeting between you and him?

A. Well, there may have been other meetings, but the one that I remember particularly, at this particular time, was in March of 1954.

Q. Is this a conversation that you recall that occurred in that month? A. Yes, sir.

Q. Do you remember where that took place, and who was present? [410]

A. Mr. Neely and I were there. It was in the ASC Office in Casa Grande.

Q. Do you recall what was said in that conversation?

A. Yes, sir. Mr. Neely asked me if I knew where there might be any extra cotton allotment that I might get transferred to his place. I told

(Testimony of Joe L. Short.)

him I didn't know, but I would check around and find out about it.

Now, this wasn't an unusual question, in fact, half of the farmers asked me that question one time or another.

Q. In that connection, did you have a later conversation with Mr. Neely? A. Yes, sir.

Q. Do you remember when that occurred, and where, and who was present?

A. Well, it was in the next few days. I don't remember the exact date, but there was a telephone conversation. I don't know who originated the call. I just really don't remember, but Mr. Neely talked to me.

He said, "Did you find me any cotton allotment?" And I said, "Yes, I think so."

He said, "Well, I will come down to the office and talk to you about it."

Q. Did he come down and talk to you?

A. Yes.

Q. Do you remember when, and who was present? [411]

A. Well, it was just Mr. Neely and me, and it was in the ASC Office in Casa Grande, and I don't remember an actual date.

Probably by looking at the evidence I can tell you the date, or what I think is the date.

Q. Would it have been approximately the 20th of March?

A. I think that's around the date, yes, sir.

Q. Do you remember what was said during that

(Testimony of Joe L. Short.)

conversation? A. Yes, sir.

Q. Would you describe the conversation.

A. Mr. Neely asked me, in other words, I had already talked to him on the telephone. He said something about did I find some allotment. I said, yes, I know *whether* there is 81 acres that you can get. "The price for it will be \$20 an acre, and of course in this kind of a transaction, usually there is a lease made out to the operator, and then he subleases it back to the lessor, and I don't have the lease now. I can get it for you if you want it."

He went out to his pickup, or his car, whatever he was driving, and wrote me out a check for \$1620.

Q. Was there any discussion at that conversation about to whom the check should be paid, or made payable?

A. Yes, he asked me who to make the payee, and I told him to make it to me, and I would see that the owner got his part of it. [412]

Q. Now, do you remember whether or not the name W. R. Burns was mentioned during this conversation? A. I don't believe so, sir.

Q. In connection with this particular incident, Mr. Short, do you recall what happened next that was of significance?

A. Well, the payment was returned by the bank.

Q. What do you mean, the payment was returned?

A. I mean the check was returned. I am sorry. I got the wrong phrase.

(Testimony of Joe L. Short.)

Q. Now, did you have some additional conversation with Mr. Neely in regard to that matter?

A. Yes, sir.

Q. When did it occur, and where, and who was present?

A. Well, I don't know the exact date, but it was within, say, maybe a week, something like that.

He came out, and I don't remember whether he was stopped in front of my house and I came out the door and noticed him sitting out there, or whether I drove down to the grocery store and he was down there, and I saw him, but anyway he was in the car, and I was in the car.

Anyway, I got out and got in his car, and the conversation went like this:

"Well, this check has been stopped, or you didn't get your money." Mr. Neely said, "I was a little leery of it. Since then I have checked around with several people, [413] but it looks like it might be all right. Is it all right?"

I told him it was. I also told him if he wanted to drop it, just drop it, when I got the check back I would give it back to him.

Q. In this connection, what if anything happened next? A. What?

Q. In connection with this proposition, what happened next, if anything?

A. In other words, that conversation was about stopped there, as much as I remember of it.

And later he told me at that time that he would

(Testimony of Joe L. Short.)

come into the office and make a new one, make me out a new check.

Q. Did he do that?

A. He came in later, but before that I did something else on that deal.

Q. What was that?

A. I went out and got some standard lease forms. You can buy those in stationery stores, and stuff like that. I got several of them, and I made up a lease and a sublease.

Q. Do you remember approximately when that was?

A. When I made the lease?

Q. Yes.

A. Around, oh, this is an approximation. Around the 30th or the first of April. 30th of March or 1st of April, something like that. [414]

Q. Did Mr. Neely subsequently come in to see you?

A. Yes.

Q. Did you have a conversation with him?

A. Yes.

Q. When did that happen, and who was present?

A. Oh, he came in, I don't know for sure about the date, say, maybe it was the first part of April, or sometime after the two previous conversations.

Q. Do you know the check that went through the bank is dated April 5th? Was that the date?

A. That is probably the date, as far as that is concerned. Say he came in on April 5th. At that time I had prepared the lease forms, and I think I prepared at the same time the release forms for the farm.

(Testimony of Joe L. Short.)

When Mr. Neely came in I got them out of the drawer of my desk, and put them on top of my desk, and I said, "You will have to sign the original of these."

He signed them. The other one had already been put in there, which I signed.

And then I took it in another part of the office, and asked one of the clerks to witness it, brought it back, and witnessed it myself.

Q. Handing you Government's Exhibit 15 in evidence, which is the Burns lease, and Defendant's Exhibit Number I in evidence, which is the sublease, do you recognize those leases? [415]

A. Yes, sir.

Q. What are they?

A. These are the lease and sublease that I made out before Mr. Neely came in.

Q. What is the date on each of those leases?

A. 30th of March on both of them.

Q. Do you know whether or not that is the day you prepared them?

A. I am pretty sure that is the day I prepared them, sir.

Q. On the lease form, there is a name signed down there in the left-hand corner, right there. Can you read that name?

A. I know whose name it is. It is Lena H. Andrews, and it is spelled differently.

Q. Is that signed as a witness on there?

A. After I had Mr. Neely sign it, I took it in to another part of the office. In other words, there

(Testimony of Joe L. Short.)

is a stub wall between where I was sitting and where she was sitting. I took it in there and said, "Will you witness this." She witnessed this and I brought it back in, and then I signed it as a witness.

Q. That is the same person, the person that signed this, Lena H. Andrews? A. Yes.

Q. Do you know whether you had her witness the sublease?

A. Yes, I took both of them in there at the same time, I am pretty sure of that. [416]

Q. Do you know how many copies of the sublease you made?

A. Made an original and one carbon copy.

Q. I think we know what happened to the carbon copy. Do you know what happened to the original?

A. Yes. It was in the bottom drawer of my desk, and I don't know exactly when it disappeared.

In fact, I might have thrown it away. It was up in 1955, or in the early part of 1956. Now, the original of the sublease was in there too, so when one of them disappeared, I imagine the other one disappeared.

Q. Going back to the conversation that occurred on what you have estimated to be April 5, 1954, aside from his giving you the check, was there any further discussion of the matter, anything other than you have just now stated?

A. I think at that particular time I had his allotment notice, a revised allotment notice made out, and gave that to him in the same conversation.

(Testimony of Joe L. Short.)

Q. Why was that done, Mr. Short?

A. Well, there were lots of farms in that county that was released acreage, and it was reapportioned to other farms. I didn't know about his financial deal for the financing of his cotton. He might have needed that cotton allotment.

Q. What I want to know is, why did you do this particular thing at this particular time, if there was a reason? [417]

A. Well, you kind of lost me, Mr. Stanfield. I don't know exactly what you mean.

Q. You stated after you prepared the leases and gave them to him, he gave you the check?

A. Yes.

Q. You drew up and prepared a revised notice of allotment? A. Yes.

Q. This was in April of 1954? A. Yes.

Q. Now, was there any particular reason for revising his allotment at that particular time and place?

A. Well, the only thing I could think of for your question is that a farmer, when he gets an allotment notice, that is his allotment.

Q. I don't think you understand, but I will go on.

During this conversation, was Mr. W. R. Burns as a person discussed? A. Yes.

Q. What was said about him?

A. I told him that the place I was taking some acreage off of was owned by a W. R. Burns, or he

(Testimony of Joe L. Short.)

was the operator, and of course the lease shows W. R. Burns.

Do you want to know the antecedents of this farm?

Q. No, I just want to know if you told him anything about Mr. Burns. [418]

A. Yes, at that time.

Q. That is all you said to him about Burns?

A. That's about it, yes.

Q. If you know, just how did you arrive at getting the so-called Burns lease? What were the steps you went through to acquire the cotton base to put on that lease?

A. Well, at that particular time, lots of farmers would come in to me and say, "I have an extra allotment." That was due to the, well, they might have horrible road conditions before them, or not enough water. Anyhow, different people came in and told me they had extra allotments. Lots of them were duplicates. We voided them. Now, on our original listing sheet there is a Farm 595. The name is in Julian Woodruff and Kemper Marley. That is on our original listing sheet, which we made out in the last part of November, or first part of December, 1953.

Of course, it was made out on the records we had at that time. The original allotment was mailed out. It was received by Julian Woodruff, and in February or March, Mrs. Woodruff came in and told me, a question that I had heard before, I think I got an extra allotment.

(Testimony of Joe L. Short.)

So I went through their farm programs, I went back through the listing sheets, and this 595 seemed to be the extra allotment.

Now, by checking it through, she said it was not [419] theirs. So she gave me the allotment back at that particular time.

As I said, we had been avoiding the duplicates, and stuff like that, but I went into the files of 595, changed one form, two forms, the worksheet, and the CN-360, I think that is the number, I used the original figures, but I changed the operator and owner on that place.

Now, in that way we had what I call a duplicate farm, or an abandoned farm, or whatever you want to call it.

Q. Now, did you discuss this mechanical act there with anyone?

A. Yes. I talked to Mr. Wolfe.

Q. Who was Mr. Wolfe?

A. At that time he was the office manager.

Q. Do you remember when this conversation occurred?

A. I can only give you the same dates that I gave you when Mrs. Woodruff come in, either in February or March.

Q. Do you know if anybody was present when you were talking about it?

A. Sir, I don't really remember.

Q. Do you know whether Mr. Mathis was present?

A. Mr. Mathis was not working in the office.

(Testimony of Joe L. Short.)

Q. Do you remember what was said in connection with this deal?

A. I told him we had another duplicate farm, that was the [420] name we called them, and I also told him that it would be better if we left it on the records.

There was a reason for that. We knew that the review committee, it was getting late in the year, and the Review Committee would come down there before long, and they would take all of our County Reserve, anything that the county committee had in reserve, the Review Committee could take.

After the Review Committee gets down and leaves, then if somebody else comes in and says, "I have got a legitimate gripe," and we go into their case and find out that they need some more allotment, then we could take it off of this duplicate farm.

Mr. Whitney: What kind of a farm?

The Witness: The duplicate. I said this is the term we originated down there.

Q. (By Mr. Stanfield): State, if you know, where the name W. R. Burns came from.

A. Sir, I don't think the name came from anywhere, except that I didn't know very many of the farmers. I probably knew half of them, or something like that.

When I was making a duplicate farm, to keep in the records, I went to the index and found out there was no W. R. Burns, or something like that, and used that name.

(Testimony of Joe L. Short.)

Q. It had no further significance than that?

A. No. It was a random name. [421]

Q. Do you know how much cotton you took from the so-called Burns farm, or the 595 farm and transferred to Mr. Neely?

A. The records show that I took probably 73 and a half acres from the Burns farm, and I used another seven acres that had been entrusted to me, and it wasn't the only ones that was entrusted to me.

Q. You stated earlier that you prepared at this time his revised notice of allotment?

A. I think that is right.

Q. Do you remember anything in connection with anything that occurred in connection with Mr. Neely's marketing card for 1954?

A. Well, some of it I imagine I remember. Some of it is going on the records.

In fact, I prepared most of the marketing cards for 1954, and probably he got the allotment card from me, and, in fact, it had my signature on it, I am sure.

Q. You mean the marketing card, is that what you mean?

A. Yes.

Q. Mr. Short, I hand you Government's Exhibit 8 in evidence, which I probably cannot identify at all, so would you tell me what that is, if you know?

A. Well, this is a supplement to the listing sheet, and it has the release and reapportionment acres that were changed in Pinal County in 1954. [422]

Q. Insofar as the 73.5 acres from the so-called

(Testimony of Joe L. Short.)

Burns farm, was that gotten into the Neely farm by this same process?

A. Well, you can look at it that way.

In other words, anything that was released by the farmer goes into a pool.

Now, there were some applications, or something like that, where some of it was supposed to go, and those were filled, and you might say 73 and a half acres comes off of 595, and went on, say, number 19, as far as that is concerned.

But the released allotment, I think part of it come from 595.

Q. Is what you are saying that by the process of release and reapportionment, cotton base would be released from one farm, and was supposed to go into a pool?

A. Well, it actually had to go into a pool first.

Q. Was that within the rules? A. Yes.

Q. Now, what was unusual, if anything, about the way it came out of it?

A. Well, the reapportionment, after it goes into the pool, there was a kind of committee decision on that.

If somebody says, now, I have leased my place to Joe Smith over here, and he wants to release an allotment, [423] then it goes into the pool. He says "I want it reassigned to him," and the County Committee would honor that contract.

Q. What it amounted to would be the County Committee would ratify the deal between the farmers? A. Yes.

(Testimony of Joe L. Short.)

Q. Is that the process that you used for the 73.5 acres for Mr. Neely in 1954?

A. Part of it come from there, yes, sir.

Q. Are there other instances in that ledger of similar transactions?

A. Well, there are about, I would say about 500 of them in here, sir, that were about the same transactions. I didn't see the money change hands, but I think it changed hands.

Q. Is that for the year 1954 only?

A. Yes.

Q. Do you know what percentage of those deals you handled?

A. How many of them I handled?

Q. Yes. A. You mean the paper work?

Q. Yes.

A. Well, I had some part in handling all of them, because most of these release and reapportionments came to me, and then I took it up with the County Committee, or if the County Committee had already ruled with the same facts in evidence, I handled most of them. [424]

Q. Mr. Short, you have heard Mr. Kennedy say that the release and reapportionment was perfectly legal in 1954, but it was, I think he said, discouraged in 1955? That's what he said?

A. I think that's about what he said.

Q. Now, is that the process that you are talking about right now?

A. I think Mr. Kennedy is partly wrong, because the release and reapportionment is a part of

(Testimony of Joe L. Short.)

the act, That is not the secretary's regulations, and it is still in the law, as far as I am concerned, unless they changed it in the last Congress.

In other words, in 1954, '5, and '6, it was still a part of the act.

Q. Insofar as Mr. Kennedy testified, do you know what was wrong with the process?

A. The parts that I questioned the State Committee on, and the State Administrator, the administering officer, was I come in here and leased a deal to somebody, then I released it to the County Committee, and they give it to him, and it was approved in the State Office.

Q. Wasn't that perfectly legal and perfectly proper?

A. Well, according to them it was all right.

Q. You say they were several hundred of those for the year 1954? [425]

A. Yes.

Q. Do you know how many there were in 1955?

A. In 1955 they said we will not let you do that again. I mean, the State Committee said that, but you can still have release and reapportionments, but you will have to justify each one of them on its individual merits.

Q. How many did you have in 1955?

Mr. Holohan: I object to that as immaterial.

The Court: I think so.

Q. (By Mr. Stanfield): In connection with the 1955 allotment situation down there, Mr. Short, do you remember having any conversation with Mr. Neely about that?

A. Yes.

(Testimony of Joe L. Short.)

K. Do you remember when and where that conversation took place, and who was present?

A. Well, it seems like it was probably in November, 1954.

Q. What was said.

A. Mr. Neely said to me——

Q. First, let me ask you this. You haven't said where it was.

A. In the ASC Office, and Mr. Neely and me were the only ones in this conversation.

As far as I remember, Mr. Neely asked me can I get this lease again for 1955?

Did I say November, 1954? [426]

Q. Is that the way it was?

A. I thought I might have said 1955. Sometimes words don't come out the way I mean to say them.

Mr. Neely asked me about the lease. I don't know whether he said the Burns lease, or this lease, or something like that.

He said, "Can I get that again for 1955?"

I told him I didn't know, but I would find out.

Q. Is that the end of that conversation?

A. Well, there were actually two conversations. It might have been two. I am sure there was two, but that's all I remember for that conversation.

Q. Then you did have a later conversation?

A. Yes.

Q. Do you remember when, where, and who was present at that conversation?

A. Well, the same persons were present, and it

(Testimony of Joe L. Short.)

was in the same place, the County Office in Casa Grande.

At that particular time, Mr. Neely asked me if he could get the lease again, and I said yes, and told him that the allotment had went down. It was not 81 acres, it was, what was it, 70, that year?

Q. I think it was 70 something.

A. All right. Let me use the figure 70.

When the allotment had went down to around 70 acres, [427] and the same price per acre, or something like that, he wrote me out a check, and at that time I am pretty sure I prepared his revised notice.

Q. Do you know if that has been admitted in evidence here, that revised notice?

A. My memory is not that good, Mr. Stanfield. Are there two of them admitted for 1955?

Mr. Stanfield: I am advised it has not been admitted.

The Witness: I am sorry, Bill, but I think it is here.

I think I saw it.

Mr. Stanfield: If the Court please, may we check our admissions?

The Court: Yes.

We will have our morning recess.

(The morning recess was had.)

The Court: You may continue.

Mr. Stanfield: If the Court please, I would like to withdraw the witness from the stand and have a couple of character witnesses testify, so they can leave.

The Court: All right.

(The Witness Short was withdrawn.) [428]

GEORGE WATSON

called as a witness in behalf of the Defendant Short, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Stanfield): Will you state your name, please? A. George Watson.

Q. Where do you reside?

A. At 11-Mile Corner, near Casa Grande.

Q. How long have you lived there?

A. I lived there 12 years.

Q. What is your business or occupation?

A. I run a variety store.

Q. Is that the only business that you have?

A. No, I do farm work.

Q. Are you acquainted with the Defendant Joe L. Short? A. Yes, sir.

Q. How long have you known Mr. Short?

A. About five years.

Q. In what connection, if any, do you know him, aside from personal?

A. I don't hear very well.

Q. Did you have any dealings with Mr. Short, business dealings? [429]

A. What kind of dealings?

Q. Business dealings.

A. He trades at the store for the last five years with me, yes, sir.

(Testimony of George Watson.)

Q. Do you know what his general reputation in the community is for truth and veracity?

A. Very good, sir.

Q. Do you know what his general reputation in the community is for honesty and integrity?

A. As far as I know, it is very good.

Mr. Stanfield: Your witness.

Mr. Hays: No questions.

The Court: That will be all.

(Witness excused.)

Mr. Stanfield: Mr. Short, will you resume the stand.

JOE L. SHORT

resumed the stand.

Direct Examination—(Continued)

Q. (By Mr. Stanfield): Referring again to your conversation with Mr. Neely in, I believe it was, November, 1954, in connection with the 1955 allotment; you stated earlier that he had given you a check, [430] I believe, for \$1410?

A. Yes, that is right.

Q. Now, what did you say in connection with his allotment notices?

A. I had his allotment notices either made out then, or had made it out when he come in there. I think I made it out when he was there.

I gave him the original allotment notices, and kept the carbon copy, and I thought it was in the file, but since we have looked at the stuff that has been introduced into this case, it is not there.

(Testimony of Joe L. Short.)

Q. One moment. I will hand you Government's Exhibit 18-A, and Government's Exhibit 11-G in evidence, with the hope that you will recognize them.

What are those?

A. This 18-A is his original allotment notice off of the original listing sheet. It is not a revised notice.

Q. And how many acres does it provide for?

A. Well, it had 306.1.

Q. I see. And what is the 11-G?

A. 11-G is a copy of his original allotment off of the original listing sheet. No.

Yes, that is for Upland cotton, both of them.

Q. I see. Now, are either of those the original, or copies of the allotment notice that you prepared for him at [431] that time? A. No, sir.

Q. What did you prepare for him at that time?

A. I made another allotment notice on the same multi-set forms that these were, and it had about, let's see, 376.7 acres on it, or something like that.

Q. Do you remember whether or not you typed that? A. Yes, I typed it.

Q. Those are made in a multi-set, you say?

A. Yes.

Q. How many copies are in one of these multi-sets?

A. I have an original and one duplicate.

Q. What is done with each of those?

A. The original goes to the farm operator. The carbon copy will go in his farm folder.

(Testimony of Joe L. Short.)

Q. Do you have any recollection of what you did with the two separate copies that you prepared at that time?

A. I gave the original to Mr. Neely, and kept the carbon copy.

Q. And you say you kept the carbon copy. What do you mean, you kept it?

A. Well, I put it in the drawer of my desk at that particular time, and finally put it into his farm folder.

Q. I see.

A. There is something on here that I don't understand. [432]

Q. Let me ask you a question about that, Mr. Short. The original notice of farm allotment, that is, the original copy of the first one, has 306.1 acres typed in, and some very small pen inked writing in here, 70.6.

What if anything do you know about that inked in part?

A. Well, I don't know anything about it.

In other words, this allotment would have never gone out with 70.6 on it like it is here.

There would only have been one figure in here, the 306.1. That would have been all right, but any others we would have had to void it.

Q. Do you have any recollection of any allotments ever going out of that office, in which the actual numbers were written with a pen?

A. Not while I was there, sir.

(Testimony of Joe L. Short.)

Q. Do you know whether the regulations allowed such a practice?

A. That is against the regulations, sir.

Q. In other words, do you know anything whatever about the inked in figures?

A. No, sir, I don't know anything about it.

Q. Now, after you prepared this notice, revised notice of allotment for Mr. Neely, and gave him the original copy, was it necessary to do anything with the remainder of the [433] office records in connection with this transaction?

A. Well, at that particular time, you are including the marketing—I mean, his cotton allotment? There isn't anything that I remember.

Q. Well, let me ask you this once again. You appropriated cotton from the Burns farm to supply this 70 odd acres?

A. Yes, I thought I had already testified about that, sir. I am sorry.

Q. That was in 1955, I am talking about.

A. Yes. I was supposed to use the Burns farm again, and it had a 70 and one-half acre allotment.

Q. Did you use it?

A. Let me look at the listing sheet and be sure. That would be Number 2.

Q. First, let me ask you if you are familiar with this Government's Exhibit 2 in evidence.

A. Yes, sir.

Q. Was that used while you were office manager?

(Testimony of Joe L. Short.)

A. Yes, sir. According to these records, I probably didn't do anything more about it.

Q. Was there any disposition of the cotton from Farm 595 for the Burns farm for that year shown there?

A. Farm 595 has a red line through it, and it has a note out here that it is on the Second Correction Supplement, Page 1. [434]

It will take me a minute to find this, sir.

We reduced the allotment on 595 from 70.6 down to 57.9, and it looked like it was later reduced, because there is another red line in it, but it doesn't have any notes out here.

If I have enough time, I will try to find it in here, and try to find out what happened to it after that.

Q. The main question I want answered is, do you know whether or not the Burns cotton allotment on 595 went to Neely in 1955?

A. Not on the listing sheet, as far as I know, sir.

Q. In other words, where did you get the cotton that you gave him?

A. From the County Reserve. Actually, if I needed it, but I never did put it on the listing sheet, sir.

Q. I see. Did Mr. Neely know anything about that particular mechanical entry?

A. No, sir, he would not know anything about it.

Q. Did you ever discuss it with him in any of your conversations at that time? A. No, sir.

Q. Now, in connection with, I think it is 11-B,

(Testimony of Joe L. Short.)

Mr. Short, I am handing you Government's Exhibit 11-B in evidence, which is supposed to be Form 578, for the 1955 Short Staple allotment on Mr. Neely's farm. Am I correct in that statement? [435]

A. That is right.

Q. Are you familiar with that form?

A. Yes, sir.

Q. Now, in connection with that form, did you ever have a conversation with Mr. Neely about that?

A. Yes.

Q. Do you remember when that conversation happened?

A. Well, it was in August, and I think the date was the 18th of August, 1955, at the front counter in the ASC Office in Casa Grande.

Q. Do you know who was present?

A. Well, there were several clerks around there, but they were not in the conversation. I was talking to Mr. Neely.

Q. Now, would you look at that form there and tell me if it is indicated anywhere that at any time there was an overplant on cotton?

A. Yes, sir. In Column D.

Q. And what does that column show as overplant? A. It said he had 426.5 acres.

Q. Now, in connection with that overplant, did you have a conversation with Mr. Short at that time and place? A. With Mr. Neely, you mean?

Q. Yes, I am sorry. A. Yes.

Q. Do you remember what was said? [436]

A. I can tell you the gist of it.

(Testimony of Joe L. Short.)

Q. All right, would you tell it.

A. When Mr. Neely came in on the 18th day of August, he said he needed his marketing cards. So I went and got his farm folder, went and got the marketing cards, not only on Upland, but on long staple cotton, brought them up there to the counter.

I said, "Rex, it looks like you are overplanted."

And he said, "Well, I think they made a mistake in my measurement."

I asked him how much he had, and he said, "I think I planted around 390 acres."

I said, "All right, you have 70 and one-half and 306. That would be around 375. You are about 15 acres overplanted."

Well, Mr. Neely said, "Yes."

I said, "Did you plow that up?"

I don't remember whether he said he plowed it up, or was plowing it up, one way or the other.

But anyway, I said, "I have some other business out in your area, and we will have to remeasure your farm and see whether we made a mistake or not. And it will cost you the regular measuring fee," which was \$10 at that particular time. And he gave me a \$10 bill. I got a receipt. Either I wrote it out or had my secretary write it out, gave [437] him the original, we kept the copy, and after he gave me the \$10, I gave him his marketing cards, because I was pretty sure that he was right.

Q. Do you know that his cotton was subsequently measured? A. Yes, sir.

Q. Do you know who did that?

(Testimony of Joe L. Short.)

A. Yes, sir, I measured it.

Q. Do you remember the circumstances?

A. Yes, sir. At that particular time we had some grain storage loan,— I think I said that wrong.

We had some grains building loans in that area. In other words, we had some loans on some grains storage buildings. I had to go out there and inspect those. It was within five or six miles of Mr. Neely's farm, so I might as well go through there, rather than having two boys who were working on the other side of the town go back out there for one farm so I took the aerial photographs, and went out there.

When I got out to the fields, I checked the aerial photographs. In fact, the rows were running, by the physical characteristics that you could see on the aerial photographs, you saw the lengths of them. There is no trouble about that.

I counted the rows. I have done that before, most fellows who do that once in a while, the way we do that, we count the rows, multiply it by 40 inches, and that gives us the width. We know what the length is. We can scale that off. [438] We can figure how much he actually has in cotton.

At the particular time I was out there, he had plowed some turn rows out, and took out a few bad spots. That is the way it was on his Upland.

On his short staple, he had took out some turn rows, and took a little bit out on the side. I counted the rows on that.

After I counted the rows at that particular time,

(Testimony of Joe L. Short.)

I multiplied it in my head. I didn't put it down on paper.

Anyhow, it looked like he had about 375 acres, or less. So I went on, made the rest of my inspections and come back to the office and run it through the computer, and I was about right. He was within his allotment.

Q. Now, you have seen the statement you signed for the CID men, haven't you, Mr. Short?

A. Yes, sir.

Q. And you remember their testimony,—that was Mr. Johnson here, and Mr. Kennedy.

A. Yes, sir.

Q. In connection with this point?

A. Yes, sir.

Q. Do you recall what you have just stated is the same story that you gave them in the statement?

A. No, sir, it is not in the statement. In other words, when I was talking to them—— [439]

Q. Let me ask you this question. Is it different from what you said in the statement, or is it in addition to what you said in the statement?

A. I will have to explain this, Mr. Stanfield.

When Mr. Neely was testifying yesterday, he mentioned a conversation, and said some stuff that was supposed to have been said during that conversation I have told the C & I boys, and he told most of the people I talked to, that sometimes my memory is not as good as I would like to have it be. Sometimes you can get all of a conversation on

(Testimony of Joe L. Short.)

something like that, and then my memory comes back, this comes back to me.

Before that, I thought that I went out there and found about 55 acres plowed up. That is wrong. But when Mr. Neely was on the stand, it come back to me, and I mentioned it to you at that time, I mentioned it to the C & I boys on the first recess.

Q. Now, did you check the long staple cotton on the same basis? A. Yes.

Q. I hand you Government's Exhibit 11-C in evidence, and ask you isn't that the 578 for the year 1955 on the long staple? A. Yes.

Q. Now, how much overplant does it show?

A. It looks like he was an acre and eight tenths over.

Q. You say you checked that through also?

A. Yes, sir.

Q. And you were satisfied that he was not overplanted?

A. Yes. When I came back into the office and had these checked with the calculator, we could either make out a new 578, or we could show it as destroyed acres. We had a choice whether we would do it one way or the other.

I chose it as plowed up acres.

Q. I believe you stated that you went ahead and had Mr. Neely sign his marketing card?

A. Yes.

Q. And his 578? A. Yes, sir.

Q. And you gave him the marketing cards?

A. Yes, sir, because I knew I could give him the

(Testimony of Joe L. Short.)

marketing cards, and I was going out there either that day or the first thing the next morning, and I could cancel those marketing cards in five seconds by calling his gin and telling him that we are voiding that marketing card.

Q. With respect to the signing of a Form 578—— A. I am sorry. You lost me.

Q. With respect to the signing of a 578 form.

A. Yes.

Q. Where a farm showed an overplant. [441]

A. Yes.

Q. Wasn't it an unusual procedure to go ahead and allow the farmer to sign that?

A. In that county, we usually let them sign them until they had plowed up their overplanted cotton, or say they were going to pay the penalty, but sometimes it did happen.

Q. How often?

A. Oh, probably 20 or 25 times a year.

Q. Is there any particular reason for that?

A. Well, lots of them live a long ways from Casa Grande, what we call windshield farmers.

They live a long ways from Casa Grande, and besides that, we have some others who live partly in Casa Grande, and one of them lives in Virginia. And another time I remember letting somebody sign it because he was going to Hawaii for a vacation.

Q. Now, if there were exceptions of that sort, what about the further step of giving them their marketing card at such time?

A. That would go on their previous record, and

(Testimony of Joe L. Short.)

as far as I was concerned, he had never overplanted, or stuff like that. I could give it to him, if necessary.

Q. You are talking about Mr. Neely?

A. Yes.

Q. How many cases a year were there when you would give [442] the farmer his marketing card, as well as letting him sign his 578 when he was overplanted, if you know?

A. There might be five cases a year.

Q. With respect to the cotton year of 1956, and allotments, do you remember a conversation you had with Mr. Neely regarding what we referred to here as the Burns lease?

A. Yes.

Q. Do you remember where that conversation took place, and when, and who was present?

A. Well, I remember one conversation, and this must have been in oh, probably December in 1955, talking about his 1956 allotments.

The conversation is about, well, the one——

Q. Will you tell us where it happened, and who was present?

A. It was in the ASC Office at Casa Grande, and Mr. Neely and I were there.

Q. Do you know what was said?

A. Well, about the same remarks came up as was in another conversation that I related awhile ago.

Mr. Neely said, "Can I get the Burns farm on this lease for the next year?"

I said, "Yes, but the price is going up. It is \$25 an acre."

(Testimony of Joe L. Short.)

At about that time, why, he took out his check-book [443] or took out a blank check, either one. I don't know whether it was a check, or a book. Anyhow, he gave me a check, and I made up his allotment notice, and gave it to him.

Now, when he gave me the check, he says I have told him that the allotment was about 60 acres, and he said, "Well, that would be about \$1500," after figuring out, or something like that, and he said, "I understand that your wife is going in the hospital before long. I am making this for \$1750. The other \$250 is not to go to Burns, it is for you."

And, of course, I probably thanked him, or something like that, but that's all I remember, sir.

Q. Mr. Short, you haven't fixed the date of that conversation.

A. If you can give me the check, I can tell you the date of it.

Q. I hand you Government's Exhibit 14-C, and ask you if you recognize that.

A. Yes, this is the check that was handed to me during that conversation, and it is dated December 9, 1955.

Q. And there is no reason for you to think that the conversation in which he gave you the check was any date different from this?

A. I don't think so.

Q. Now, what if anything did you do so far as the office [444] records are concerned to acquire this 60 acres of allotment from Mr. Neely, rather, for Mr. Neely, and put it on his farm?

(Testimony of Joe L. Short.)

A. Well, I was thinking about taking it out of the County Reserve, but I never did get to it, sir.

Q. What do you mean, you never did get to it?

A. Well, possibly it slipped my mind, or I was in pretty bad health at that particular time, sir.

Q. You have no recollection of doing anything about it, is that your story?

A. Not that I remember.

Q. I hand you Government's Exhibit 11-E, and Government's Exhibit 19 in evidence, and ask you if you know what those two are?

A. Yes. Number 19 is his original allotment, and it comes from the original listing sheet, and it is the original, so it must have went to him.

Now, Number 11-E, this is a carbon copy of a cotton allotment that H. L. Mathis drew up at my instructions, because the carbon copy that I had for the revised allotment which goes between these two allotments, had got lost from our drawer, and I told him to make it, put the carbon copy in the farm folder, to tear up the original.

Did I make myself clear on that?

Q. You did to me. I hope you did to the jury.

In other words, you did then prepare a revised notice of allotment for Mr. Neely for the year 1956?

A. I prepared one, and ordered another one prepared.

Q. Do you remember when you prepared yours?

A. Probably on December the 9th, 1955.

Q. Do you know what happened to the original?

A. Well, I gave it to Mr. Neely, sir.

(Testimony of Joe L. Short.)

Q. Do you know what happened to the office copy?

A. No, sir. I put it in my desk drawer, and the next time I looked for it, it was not there.

Q. Now, why did you have Mr. Mathis prepare this subsequent revised one?

A. So I would have an office copy.

Q. Do you know what happened to the original of that?

A. He was supposed to tear it up. I don't know, sir.

Q. And the dates on here are December 1st, 1956?

A. That is, it is about that time I told him to do it. In fact, I think it was later than that, and he probably made it around the 10th of December, and dated it back to the first, or something like that.

Q. What was the state of your health, Mr. Short, in 1956?

A. Well, the state of my health in 1956, it begins in 1954 when I developed a duodenal ulcer, I was on a diet for a long time, and then in 1955 it kept getting worse.

The ulcer pretty near cured itself up, but the [446] tension was getting me. In 1956, the doctors told me several times that I would have to quit that job, because it was finally, I was going to have an eruption, or something like that.

In June or July, the doctors told me that I should only work two days a week. I called the clerks together and told them, "I will be here only

(Testimony of Joe L. Short.)

two days a week. Mr. Mathis will be in charge of the office when I'm not here. If he makes a mistake, I will talk to him, and so forth. But anything else, you do it as Mr. Mathis says."

Then the first of August, the doctors told me to take 30 days off, and, if necessary, I might have to take 60 days off, so I went up to Sedona, and stayed up there about nine or ten days, and, well, I just got hemmed in up there, so I come back to the office and started full time work, and on September 8th, I had a stroke.

Q. How did this stroke affect you, Mr. Short?

A. I lost the control of my speech. I was partially paralyzed on my right side.

Q. You say this happened on September 8, 1956?

A. Yes.

Q. Were you in the hospital?

A. I was in the hospital for about a week, and then the doctor said it looks like it's going to be a long process for him to recuperate, so let's let him go home, and told me not [447] to go back to work for some time, for any definite period.

Q. You did once again return to work, eventually, did you not?

A. Yes, sir. First, my wife would let me go in there maybe five minutes, to begin with. Later it was an hour. Then she let me go in there about two hours, and by the middle of October, or first part of October, I could go in there about half a day, but I never did return to full time work.

(Testimony of Joe L. Short.)

Q. You said you did go back on a part-time basis by October or November?

A. I think in October. It might have been the last of October, first part of October. It had to be the last of October. It had to be the last of October, or the first of November, when I was there about four hours a day.

Q. When did you return full time?

A. I never did return to full time work.

Q. And when was your employment terminated?

A. On the 28th day of December, 1956.

Q. Mr. Short, you were pretty much out of the office there for a period of three, perhaps almost four months. Were you paid for that time?

A. Yes, sir, I was paid for it.

Q. Now, you have heard the testimony of the Government agents regarding the many tapes which you made? [448]

A. Yes.

Q. I hand you Defendant's Exhibit J, and ask you if you recall signing this statement?

A. Yes, sir.

Q. Do you remember that I was present there?

A. Yes, sir. In fact, I couldn't read it at that particular time, and I still have trouble reading, so I had it read to me, and I think he read it to me, and then I signed it.

Q. Is your recollection that January 14, 1957, is the date that we signed it?

A. I am sure that is the date.

(Testimony of Joe L. Short.)

Q. They took this statement from a tape that was made in my presence? A. That is right.

Q. Isn't that your understanding, Mr. Short?

A. That is right.

Q. Did you have any additional sessions with these agents?

A. Yes, sir. Quite a few of them.

Q. Do you remember when they took place?

A. I think they started in January, and lasted until March, or something like that. Probably three months. Not every day, but maybe one time a week, sometimes two or three times a week.

Q. How did they make the arrangements for taking these [449] tapes from you?

A. Well, Mr. Kennedy had a tape recorder, and he usually set it up in the office that we were talking in, and when they needed me in there, wanted to talk to me, they usually would call me, and he would come out and get me and take me into the office. I would talk to them, and then he would take me back home.

Q. Do you know if the additional tapes were ever reduced to writing?

A. Not that I know of, sir.

Q. You have a fair recollection of what went on on these additional tapes in the conversations?

A. Yes, pretty well.

Q. Do you recall whether you have had any conversation with agents Kennedy, and perhaps Johnson, regarding the ACP practices of Mr. Neely?

A. Yes.

(Testimony of Joe L. Short.)

Q. Do you remember where that conversation took place?

A. It was in the ASC Office in Casa Grande.

Q. Do you know when, particularly?

A. No, I don't remember the date.

Q. Was it all in one conversation?

A. No, sir. They mentioned it one time, and I think we talked probably an hour or an hour and a half. Later they mentioned it again, maybe two other times. I don't know for [450] sure the other, as I remember, just passing topics.

Q. In particular, did this ACP practice of Mr. Neely's in 1954, do you remember what was said?

A. They showed me some forms from his ACP file, and they asked me if I could identify them.

I said I can tell you what they were, and some of them I might identify, and, well, when they come up with the different forms, they asked me different questions on them.

Q. Did they discuss with you the handling of the ACP of 1954, as to personnel?

A. A very little bit.

Q. Was it brought out in this conversation who had handled ACP in 1953 and 1954, and so on?

A. Well, I don't think there was a question asked me on that, but probably I told them there were other people handling it.

Q. Let me ask you this, Mr. Short. Did you discuss with them a girl that had worked there by the name of Edna Drivens?

(Testimony of Joe L. Short.)

A. I think I mentioned her name, and I told them I had a little bit of trouble with her work.

Q. What did you tell them in connection with her?

A. Well, I think I told them that she started to work in 1954, I think, early. She replaced me on the ACP, and after I became office manager, I checked her every once in a while.

The first time I checked her was on, oh, probably [451] in February or March. At that time she was \$12,000 over her budget, and that didn't set very well with me, so I re-did her first ledger to be sure where she was, and went and talked to the County Committee on it, and they said, Well, she just made a mistake, let's let her go on.

I did let her go on. A few weeks later I checked it again, and she was off again, so I fired her.

Q. Do you remember if you replaced her with anyone?

A. Later, Paul Hanna replaced her, yes.

Q. Now, in various conversations that you had with the Government Agents, we know there was some conversation about the signatures of Doyle Dunkin.

A. Yes, sir.

Q. On some ACP forms? A. Yes.

Q. Do you remember any of that conversation or conversations?

A. Well, in the first conversation that I said lasted an hour, maybe an hour and a half, something like that, they brought out this 247, and they showed it to me, and I said it was a surprise to me. Why

(Testimony of Joe L. Short.)

is Doyle Dunkin's name on there, or is that Doyle Dunkin's name. And they said, "We don't know who signed it."

And I said, "I don't know, I don't know a thing about it." And all during that conversation, as far as I [452] remember, I told him that I didn't sign it. And I still don't know a thing about it.

Q. Did you have a subsequent conversation in that connection?

A. Yes, sir. Maybe it was a week later. It may have been longer, they brought it up again in another conversation. They said, "We have had this checked by a handwriting expert, and they say it is your signature."

I said, "All right, let's take your expert's opinion. Maybe I signed it. Why did I sign it? There is no reason for it. It just doesn't make sense."

Q. Why do you say it doesn't make sense, Mr. Short?

A. Well, in a year's time, I probably signed 300 of those as an office manager, and there is one place that I can sign that is for the authorized representative of the County Committee.

Then it goes to the S.C.S. The S.C.S. had been very cooperative with me. If a certain practice didn't go the way it should have been, I could go in and talk with the S.C.S., and they would give me the report I needed, if it was legitimate and above-board, all right.

Why should I put Doyle Dunkin's name on there, and besides, that doesn't spell his name right, and

(Testimony of Joe L. Short.)

it doesn't have the right middle initials, and I told the investigators that in that particular time why should I put Doyle Dunkin's [453] name on there, because Mr. Neely's farm was not in the Indian Reservation. I would have to have gone to the S.C.S. to get it. In other words, it still doesn't make sense to me.

Q. Do you know Ray Bates? A. Yes, sir.

Q. Who is he, or who was he at that particular time?

A. At that particular time, he was the responsible technician for the S.C.S. Service in Casa Grande. In fact, he covered all of Pinal County.

Q. Did he ever sign papers of that sort?

A. Yes. Sometimes we would get an application, and some way it would get mixed up, and, as I said, it could have gotten mixed up with the girl being bad, or stuff like that, and they wouldn't get the 247's over to the S.C.S.

Later the farmer would come in and say, "I got this all done."

And I would go over and talk to Ray Bates, and I would say, "Ray, we just made a mistake. We didn't get it over here. Can you go out and check it and find out if it is necessary," and then do the performance report, and he never refused me a time.

Q. Where was Mr. Bates' office located at that particular time?

A. Let's see. That was in 1954.

Q. Yes. [454]

(Testimony of Joe L. Short.)

A. We had a hall about three feet wide running through the office, and he was on the other side of this aisle, you might say. In fact, we didn't have full partitions. They were just half partitions. In fact, I could holler from my office, and Ray would hear it.

Q. Did you know Doyle Dunkin?

A. Yes, I knew Doyle very well.

Q. In what connection did you know him?

A. Well, in the ACP program, we were always trying to get some ACP work done on the Indian Reservation, and before he was on the Gila Reservation, he was down on the Papago Reservation. Besides that, I square danced with him.

Q. Mr. Short, I will hand you Government's Exhibits 12-D and 12-E in evidence, and ask you if those are the documents that the CID boys showed you, as far as Dunkin's signature is concerned?

A. Yes, I think they are the same.

Q. Do you know Doyle Dunkin's signature?

A. Yes.

Q. Is that it on that? A. No. No.

Q. Do you have any independent recollection of signing those signatures?

A. No, sir, I don't know a thing about it, sir. As I have said before, some of it looks like my handwriting, but [455] if I signed one of these 247's, I would remember it, and I still don't remember it.

Q. What you are saying is that you do not——

Mr. Holohan: He did not sign it.

Mr. Stanfield: I beg your pardon?

(Testimony of Joe L. Short.)

Mr. Holohan: Never mind.

The Court: Go ahead.

Q. (By Mr. Stanfield): Your statement is you do not remember signing it? A. No.

Q. Now, Mr. Short, do you recall any conversation that you had with Mr. Neely in 1956 in connection with any of the charges that are being tried here today?

A. Yes, sir. I talked to him about the charges. Not—our conversation was not about that.

Q. I want to know when, where, and who was present.

A. Well, there are two conversations that I remember right now. One of them I think was on the 19th day of December.

Q. Where?

A. In the ASC office in Casa Grande.

Q. Who was present?

A. All I remember is Mr. Neely and myself.

Q. What was said?

A. For some reason I had his farm folder out on my desk. I don't remember whether somebody told me that Mr. Neely was [456] in there, or whether I went out and got it when he came in, or what it was, now.

I had it out on my desk, and I said, "Rex, did you plow up your overplanted cotton out there on your farm?"

And his conversation was, "No."

I said, "Rex, you are overplanted. You better go into the State Office and tell them to get measure-

(Testimony of Joe L. Short.)

ment boys out there from the State Office, and pay the penalty."

Q. What did he say, if anything?

A. Well, I don't remember anything that he said. I mean, nothing other than what I was talking about.

Q. There was a later conversation?

A. Yes.

Q. Where did that take place?

A. The next one I think was in Chandler.

Q. Do you remember when it was?

A. No, sir, I don't remember the date. It was after the first one, I am pretty sure of that.

Q. Would it have been in December?

A. Yes, I say after the one that I just testified to.

Q. And who was present?

A. In fact, I was in Chandler for a meeting, and I called Mr. Neely to meet me somewhere, and we met in a cafe, and Mr. Neely and I were the only ones there.

Q. I see. What was said? [457]

A. He asked me had they measured his farm, or something like that. In other words, the conversation started on that point, and I said yes, I thought so, but I didn't know. And he asked me how much the measurement was, and I said I didn't know.

Q. Anything else said, do you remember?

A. That's all I remember right now.

(Testimony of Joe L. Short.)

Q. Do you remember if his allotment notices for 1956 were mentioned?

A. Yes. There was. I asked him to look up his revised copies of his allotment notices, and keep them handy.

Q. Did you tell him why he should keep them handy?

A. There were some investigators. I didn't tell him whether they were from the State Office or whether they were from the CID office, but I told him they were doing some investigating in Pinal County, so look up his allotment notices, and keep them handy.

Q. Did you have a further conversation with Mr. Neely in connection with this?

A. Yes. On the 28th day of December, 1956.

Q. Where?

A. It was in front of my house where I live. I knew that Mr. Neely was coming down there. I don't know whether there was a telephone conversation before that. I imagine there was. I don't know who originated it, or anything else. I knew he [458] was coming down there. I think it was around five o'clock in the afternoon.

Q. What was said during that conversation?

A. Mr. Neely asked me again about the measurements, and I told him I didn't know, because they had never informed me how much measurements they had—how much cotton they had found on his place.

(Testimony of Joe L. Short.)

Then Mr. Neely asked me about the Burns lease, and I told him not to talk to me about the Burns lease, just forget that for right now. There are some investigators in here, and they will probably get in touch with you. And I also told him to hire a counsel, or go talk to a lawyer.

Q. Now, did you have a subsequent conversation with Mr. Neely? A. No, sir.

Q. When was the next time, if any, you talked to him?

A. Other than seeing him here in the courtroom, I haven't talked to him since then, except on the 11th or 12th of this month.

Q. Since this trial started? A. Yes.

Q. Now, in connection with the release and re-apportionment practices in the County, I don't know whether I have asked you or not as to during the years you were in the office there, how many were handled each year? Did I ask you that already? [459] A. Not that I remember.

Mr. Hays: You asked it.

Mr. Stanfield: Mr. Hays said I asked it.

The Witness: I forgot it, then.

Q. (By Mr. Stanfield): During the years you ran the office down there, do you know what the allotment of cotton was for the County?

A. Yes.

Q. What was it?

A. In 1954 it is 165 acres, plus some added extra acres. In 1955 and 1956 it is 138,000 acres.

(Testimony of Joe L. Short.)

Q. Do you know how much was planted and harvested to cotton in those years?

A. Yes. According to the AMS figures, which were prepared from the records in the ASC office, I know for 1954 and 1955.

Q. What were those figures?

A. In 1954, we had about 159,000 acres. In 1955, I think it was about 133 or 4 thousand acres.

Q. In 1956, do you know that figure?

A. No, I don't know that, sir. I wasn't there when they computed that.

Q. Do you know whether the county allotment was exceeded by the planted acreage in any of those years?

A. Say that again. [460]

Q. Do you know whether the plant, the county allotment was exceeded by the planted acreage in any of those three years, harvested acres?

A. The total planted to cotton in that county did not exceed the total allotment for the county, is that what you mean?

Q. Yes. A. No.

The Court: We will recess until two o'clock.

(The noon recess was taken.) [461]

Wednesday, September 17, 1958

Two O'Clock P.M.

The Court: You may continue.

JOE L. SHORT

resumed the stand and testified further as follows:

Direct Examination—(Continued)

Q. (By Mr. Stanfield): Mr. Short, I don't believe I asked you this question before. What was your physical condition during the time in which you gave the government agency these statements in December of 1956, and in the first part of 1957?

A. I had learned to talk again, and I couldn't write and couldn't read.

Q. What about your memory? [462]

A. Well, my memory wasn't as good as it should have been at the time, and it had improved from what it was in September of 1956.

Q. Now, in comparison, what is your condition today?

A. Well, I am better than I was at that time. I still have trouble talking. I still have trouble writing. And I still have trouble reading long documents, and my memory is better, but I am still not normal.

Q. Now, with respect to the Form 578, do you know what the regulations were while you were office manager, what they provided, insofar as when the farmer was to sign them? A. Yes.

Q. What did the regulations provide?

A. The farmer-reporter, or farm measurer, if you want to call him that, goes out to the farm and

(Testimony of Joe L. Short.)

is supposed to contact the operator of the farm, and they go over the fields.

The operator is supposed to give him an estimate on his fields, and then the reporter is supposed to get it signed by the operator.

Q. When? A. At that time.

Q. Was that the usual procedure used in securing that?

A. It was. Because a lot of operators lived off the farms, and if you take the 578's out to the field, they can plot it on a map, and can put the figures down for each field, and [463] then they can't find the operator. So we usually kept them in the office.

Q. Now, referring again to the conversation that went on between you and the government agents, some of which was tape recorded, and some of which was not tape recorded. Do you remember whether or not you had a conversation or conversations regarding the irregularities that might have been in your office there? A. Yes.

Q. Were these conversations had during the periods you have previously mentioned?

A. Yes.

Q. Do you know what was said in that connection?

A. Well, they asked me about any objection that I had to the County Committee's opinions, and I said yes, I objected sometimes on the Committee's opinion, but about the only way I could tell you about it is to bring the Minutes in, and we will go through them, and if I objected, why, I would tell

(Testimony of Joe L. Short.)

you about it, but they never did bring in the Minutes, and never did say much more about that part.

There was some other irregularities that were mentioned. Did you want me to go ahead and tell about them?

Q. Was it in the statement?

A. I beg your pardon?

Q. Is that what you told them? In other words, it was [464] something you said to them?

A. Yes, I told them about it.

Q. You might as well say.

A. Well, we mentioned some names. One of these was the Casa Grande Country Club. Kenneth Julian, and Frank Russell, and Peggy Golston, and, of course, I had already told them about Neely, Simmons, Ladd, and Morris. That's about all I remember right now, sir.

Q. Was there any further conversation regarding these first ones you just now mentioned?

A. Very little. The only one that I remember anything more about was the Casa Grande Country Club. They asked me a few more questions about it.

Q. Do you remember what was primarily discussed at the later conversations—were there particular persons that they were interested in at that time, rather than the ones mentioned?

A. In part of the conversations, they were very particularly interested in John E. Beggs, and Henry Haley, and Rodney Elsberry was mentioned, but not very much.

Q. While you were making the statement to

(Testimony of Joe L. Short.)

them, did you discuss with them your part in this affair?

What I mean is, did you discuss with them your part in the subject which they were investigating?

A. Yes. [465]

Q. What did you tell them, briefly?

A. Well, in other words, I told them that these different things transpired while I was in the office manager's job, and nobody else knew about it except me. And I also told him, if you find something that you want to understand, or want some information about it, bring the files to me. And if you don't bring the files to me, why, I don't know whether I can tell you about it or not.

Q. Did they subsequently do that? A. No.

Q. Now, in this same conversation or conversations, did you discuss with them Mr. Neely's ACP situation in 1954? A. Yes, sir.

Q. Was that with both agents, or just one?

A. I think there was two there, sir.

Q. Where did that happen?

A. That was in the ASC Office in Casa Grande.

Q. Have you any idea when that was?

A. No, sir, I don't know the date.

Q. What was said in that connection?

Mr. Holohan: I object. It has been asked and answered. It is just what we went through before lunchtime, where we showed those documents, and went through that about Doyle Dunkin, and so forth.

The Court: Well, go ahead. [466]

(Testimony of Joe L. Short.)

Mr. Stanfield: I will be glad to withdraw the question as far as the Dunkin episode is concerned.

The Court: All right.

The Witness: Well, they showed me several documents. There was one that was marked Cancelled, and it had a date on it in November, 1953. And then they showed me another application, and I think it bore a date of May, 1954, something like that.

And then they said when he made this application, did you know the work was already done. And I said, "I don't know, I really don't know."

In fact, I was not running the ACP program at that particular time. I said, "If you will give me the whole files, maybe I can help you, but with individual documents, I can't help you."

Q. Did they so provide them in the file?

A. No.

Q. Now, in your statements to the agents, did you discuss with the agents your reasons for what you had done, and disclose to them by virtue of the written statement?

Is that question clear enough to answer?

A. You lost me, Mr. Stanfield.

Q. In other words, did you discuss with the agents what you had done, and eventually made a full disclosure of?

A. Yes. [467]

Q. Did you discuss with them in these statements the reasons for what you had done?

A. I think probably I gave them a reason. I don't know for sure.

(Testimony of Joe L. Short.)

Q. Do you remember what that reason was?

A. Well, yes, sir. I know the reason. As the office manager, I handled lots of transactions that went on in the same way.

In other words, the administrative details were the same. I guess I got carried away and thought I ought to get in on the money.

Q. Let me ask this question. Did you at any time, whether you made an admission in a statement, or otherwise, did you ever have any understanding, or any agreement with Mr. Neely with regard to the conspiracy as charged here?

A. No, sir. No, sir. There was no agreement other than what I have told you today, and what is in my statement so far.

Q. Did you at any time conspire with Mr. Neely to do anything? A. No.

Mr. Stanfield: You may cross examine.

Mr. Whitney: If the Court pleases, in connection with Government's Exhibits 21 and 23 in evidence, 21 is the Deposit Slip of \$1500, dated October 7th, 1954, and the [468] Government Check dated October 6, 1954, covering the 1954 AC Program, there has been some talk here about two checks being issued in 1954, and I finally located in the bank through microfilm a copy of the other check mailed in 1954.

I talked to the United States Attorney about it. He didn't have the original himself, and he agreed to stipulate with me on this matter.

Mr. United States Attorney, will you stipulate

(Testimony of Joe L. Short.)

with me that—pardon me, I better mark these in evidence, both of them, or for identification. This first one, mark it as an exhibit for identification.

The Clerk: Defendant's Exhibits R and S for identification.

(Said Copies of Checks were marked as Defendant's Exhibits R and S for identification.)

Mr. Whitney: Will you stipulate with me, Mr. United States Attorney, that Mr. Neely received payment by Treasury Check April 20th, 1954, for the 1953 ACP Program?

Mr. Hays: We will so stipulate.

Mr. Whitney: And that Mr. Neely deposited in his account pursuant to Defendant's Exhibit S for identification on the 23rd. I don't know what date that is. April 23rd, 1954.

Mr. Hays: Yes.

Mr. Whitney: And we offer in evidence R and S for [469] identification.

Mr. Hays: No objection.

The Court: It may be received.

The Clerk: Defendant's Exhibits R and S in evidence.

(Said Copies of Checks were received in evidence and marked as Defendant's Exhibit R and S.)

Cross Examination

Q. (By Mr. Whitney): Mr. Short, we are going to try to make this as short as possible.

Referring to Government's Exhibit 11-B for iden-

(Testimony of Joe L. Short.)

tification, when was that red writing put on there, with reference to the date August 18th?

A. It either went on there that afternoon, or the next morning after I went out and checked his fields.

Q. I see. That was not on there when Mr. Neely signed it? A. No, sir.

Q. Referring to Government's Exhibit 11-C for identification, also covering the 1955 acreage of Long Staple, you notice those red figures there?

A. Yes, sir.

Q. When were they put on there, with reference to that date, which is the same date, August 18th, 1955? [470]

A. The same answer I gave to the previous question. It was after I went out and checked the fields.

Q. Not at the time that Mr. Neely signed these?

A. No, sir.

Q. Now, with reference to the so-called Burns lease, Government's Exhibit 15 in evidence, did you sign that W. R. Burns? A. Yes, sir.

Q. And what date was that signed?

A. I think it around March the 30th.

Q. Before you got your second check from Mr. Neely for \$1620? A. Yes, sir.

Q. And I notice that you have witnessed the signature of Rex L. Neely? A. Yes.

Q. And you did that at the time Mr. Neely signed the lease? A. That is right.

Q. And the name W. R. Burns was already on there? A. That is right.

(Testimony of Joe L. Short.)

Q. This Lena H. Andrews? A. Andrews.

Q. I notice that she witnessed that also. Whose name did she witness? [471]

A. Both of these names were on here when I took it in to her, and asked her to sign it as a witness.

Q. She, of course, didn't know anything about this, did she know anything about this?

A. No, sir.

Q. About W. R. Burns being signed by you?

A. No, sir.

Q. She just did that because you asked her?

A. That is right.

Q. Mr. Short, I am going to hand you some exhibits that I don't understand.

First, I am going to hand you Defendant's Exhibit G in evidence. What is that?

A. Well, it is an application that the Government share the cost of an Agricultural Conservation Practice for the 1954 year.

Q. And that was signed by Mr. Neely?

A. Yes.

Q. And what is the date of that?

A. November 2nd, 1953.

Q. I notice that the word Cancelled is written across there. A. Yes.

Q. How did that come about?

A. Probably there was another application made at that time. [472]

Q. And she cancelled this one?

A. Now there are some more forms that I would

(Testimony of Joe L. Short.)

like to have in front of me before I say why she cancelled.

Q. All right, I am handing you Government's Exhibit 12-A, 12-B, 12-C, 12-F, 12-G, H, and Government's Exhibit 12 is a folder. See if you can explain those different documents to the Jury. I certainly don't understand them. Referring to them, now, by Exhibit Number, when you do it, please.

A. All right, then. The one that I identified first, and this is Defendant's Exhibit G, he probably made this application on the 2nd of November, 1953. All right, later——

Q. Wait a minute. For what practice?

A. For ditch lining.

Q. For 1954?

A. Yes, sir. He said he was going to——

Q. What date, for 1954 ditch lining?

A. Yes. In other words, at that time we were taking 1954 practices in 1953, but it is under the 1954 program.

Q. Was that allowable under the law and regulations at that time? A. Yes, sir.

Q. What period of time did that run, when you took such applications?

A. The 1954 program I think started the 1st of November, and run until the 31st of December, 1954. That is the 31st [473] of November, 1953, to the 31st of December, 1954.

Q. I see.

A. Do you want me to go ahead?

Q. Go ahead.

(Testimony of Joe L. Short.)

A. After he made this original application, it looks like he come in later in the year, I don't know exactly what time, but there is another application in here.

Q. Did he make this application in front of you, do you remember?

A. At that time I imagine he made it in front of me. There is no way that I can say that for sure.

Q. I see. Very well.

A. The next one is Government's Exhibit 12-A. This is another application for Agricultural Conservation Program money, and it has a date on it which looks like May 24, 1954.

Q. Okay.

A. Now, there are two dates on here. One of them at the bottom of the page, and the other one is probably one inch above it.

Q. I see.

A. Lots of time we would use the bottom date, because that was when the County Committee signed it, and put it on the line above, an inch above there.

Q. Yes.

A. But it looks like he had changed to land leveling, and [474] some ditch lining. Now, of course, he had already applied for one of them, for some ditch lining, and at this time he was applying for some land leveling.

Q. Yes.

A. And there is a note on here that looks like it is in my handwriting.

(Testimony of Joe L. Short.)

Q. What does that say?

A. It says, "Request for Change of Approval from First to Second Practice." And it has the date on it, 5/27/54.

Now, what it looks like to me on these records, he come in, made the application for the ditch lining. I says, all right. Later he got to thinking about it, and he says, "Well, I think I will level a quarter of a section of land out there." I do know from the S.C.S., I knew his land leveling would not go through, and I think I told him, he may have been told before, I don't know, about that.

Q. Why wouldn't it go through?

A. I think the question at that time was Mr. Neely eye-balled that land leveling instead of doing it by an instrument.

Q. What do you mean "eyeballed" it?

A. An instrument makes a straight line. Sometimes you can get down on the ground and eyeball it in, and kind of fill up the hollows, and the S.C.S. wouldn't approve it. It had to be done by instrument.

Q. He didn't get paid for it? [475]

A. No, because the S.C.S. turned it down. When he come in, anyhow, at this particular time, I said, "Mr. Neely, that land leveling is not approved. What are you going to do now?"

He said, Well, I would like to go back to the ditch lining.

I said, "All right, you made an original application for the ditch lining." So I either called the

(Testimony of Joe L. Short.)

ACP clerk up, or went back to see the ACP clerk.

Q. In the same office?

A. Yes, and probably took Mr. Neely with me. At that time I wrote a note, and I didn't sign a new application.

Q. I see.

A. And I probably said, "Reinstate the first application," or, "If you can't find that one use this one."

Because I know he had an application in here. It is proved in our control ledger.

Q. Very well. Now, what is the next deal down on that?

A. Well, this is Defendant's Exhibit H. This is a form that goes out. It is made in manifold sets. There are five of them. The original goes to the operator, and this has the date on it of November 5, 1953, and it concerns concrete ditch lining.

Q. Did it concern this deal here, Defendant's Exhibit G?

A. Yes, sir.

Q. The cancelled document? [476]

A. Yes, sir. And this, I imagine the other ones are in the file, I haven't checked them out to be sure, but there should be three more in that file.

Q. See if you can locate them.

A. There are four more of them in here, sir.

Q. Very well, pick the first one. That is out of Government's Exhibit 12?

A. Yes. Now, may I explain how these four, what happens to them?

Q. That's what I would like to know.

(Testimony of Joe L. Short.)

A. Okay. When you make up a 247, there are actually five copies, original and four carbon copies. The five copies are distributed this way.

The original goes to the operator, as I said before. Three copies go to the S.C.S. One copy stays in our files in the ACP office.

All right, after the three copies get to the S.C.S., the first thing they have to do is sign a statement of need.

Now, it looks like—there is some unusual papers on here and I really don't know exactly what they are. I think I know.

Q. Did you make them out?

A. No, I didn't make them out.

Q. Do you know anything about them?

A. No. This particular copy has, it looks like Ray Bates' signature in two places, and he was the County representative [477] for the S.C.S. at that particular time, and he said on the bottom one, "Full amount not put in."

Q. That is November 5, 1953? A. Yes.

Q. For the 1954 practice?

A. Yes, that was 1954.

Here is a Performance Report.

Q. Unless you know about it, don't testify to it.

A. This Performance Report we used in 1953. I know that the S.C.S. used it, but we didn't use it. And here is a regular business statement that we didn't use, but we had to have that when our application, rather, we had to have that with our appli-

(Testimony of Joe L. Short.)

ation before we sent in our application for payment.

Q. That belongs in this folder, does it?

A. Yes.

Now, here is the other three copies. On two of them it said, "Paid under the 1952 ACP, Cancelled."

And it looks like it has got Ray Bates' signature on it. But the note in here is not in his handwriting. I didn't look on the backs of these, and I should have. Here is one that has got a chart on the back of it.

Q. Take a look at this other one.

A. This one?

Q. Yes.

A. Yes, the chart is the same on the back. The Government [478] forms don't give us a way that we can check where a ditch is in a certain section, so we usually do a section off on there, and there is two of them gone off on here.

Q. What does that say to you?

A. It looks like—(indicating on document.)

Q. You refer now to the blackboard?

A. Yes. Let us call this Section 13. It looks like the ditches were checked for this ditch, and this ditch. (Indicating on diagram.)

Q. That is for this mile and this half?

A. Yes.

Q. For what year?

A. This is on the 1954 form, sir.

Q. All right.

A. All right, now, at that time I knew he had

(Testimony of Joe L. Short.)

some ditches out there. In other words, that is why I said, when Mr. Neely came in, and he said, "I am going to put in some more ditch," I thought he was talking about the ditch from "A" to "B".

Q. He had that in already?

A. Not the first time I talked to him about it in November, 1953, he didn't have it in there, as far as I know, but probably in May, he already had it in.

Q. This was a 1954 practice? A. Sir?

Q. This was a 1954 practice?

A. He was trying to find out if it could come under the 1954 practice, and I said, "Reinstate the original application, that way he will be eligible, but we will probably have to explain it to the S.C.S."

Q. All right.

A. Now, this one with no notes on it was probably our file copy.

Q. Now, Mr. Short, referring to Government's Exhibit 12-G, does that mean anything to you? Do you know who drew it, 12-G for identification?

A. No, sir. I don't know who drew it. By looking at it I can get some ideas.

Q. What does it tell you?

A. Well, it has the same chart on it that we see on the blackboard.

Q. Now, referring to Government's Exhibit 12-F in evidence, which is related to ditch lining, which is dated apparently September 27, 1954, and admittedly signed by Mr. Neely, "Approved Practice and

(Testimony of Joe L. Short.)

Application for Payment for 1954 Agricultural Conservation Program". A. Yes.

Q. Now, as I understand it, at the time that was signed the work had been performed between the dates of January and March, 1954? [480]

A. Yes. That could happen.

Q. How does it come about the Government is claiming that this was signed after the work was done, or should have been signed before? What do you say about that?

A. Well, you have two applications in there, sir. One of them was signed before the work was done. One of them was signed after the work was done. If you remember, I told you that I said to reinstate the original application. I don't think that one was ever reinstated.

Q. Whose fault was that?

A. Well, it was my ACP clerk, sir.

Q. It was not Mr. Neely's fault, was it?

A. No, sir, no, sir.

Q. Now, I want to ask you with reference to this, that P.B.H., 9/25/54, in ink there.

A. Yes, sir.

Q. What does that mean?

A. The person who finally finished this up, an application for payment. Now, this is a different application. After the work has been done, then you have to put in an application for payment. Who finally finishes it up has to sign it with his initials, and the date that he did it.

Q. Yes, sir.

(Testimony of Joe L. Short.)

A. And this means that Paul B. Hanna did this application, and he put the date on it, 9/25/54. [481]

Q. Did you give that to Mr. Neely to sign?

A. I think so, sir.

Q. Referring to the last paragraph there in red printing, where you see Yes or No, the word "No" typed in, Yes or No and the word "No" typed in.

A. Yes.

Q. Was that typed on there at the time Mr. Neely signed it?

A. The questions were not answered at that time, sir.

Q. When were they put on?

A. Probably when Mr. Hanna got this application back on his desk, he said, "The questions are not answered," and that happens lots of times at that particular time of year.

I said, "I don't think he farms any other farm in any other county," and so he put two Noes on there, sir. That was my fault, if you want to say it that way.

Q. Mr. Neely had nothing to do with those Noes on there?

A. No, sir. In fact, if I may elucidate a little bit. I didn't know until the first part of 1956 that Mr. Neely was farming a farm in Maricopa County.

Q. Had you known that, you wouldn't have signed that application?

A. No, sir. This would have been Yes, and I would have figured out what happened in Maricopa County.

(Testimony of Joe L. Short.)

Q. Do you have any idea about Mr. Neely's familiarity [482] with the Government laws and regulations referring to agriculture?

A. Well, I talked to a lot of people, and lots of them——

Mr. Hays: I move to strike the answer as not responsive.

The Court: Yes, it may be.

Mr. Hays: I object to the question as calling for a conclusion of the witness.

The Court: Yes, sustained.

Q. (By Mr. Whitney): In other words, you don't know anything about Mr. Neely's familiarity?

A. Well, it would be——

The Court: You don't have to answer it.

Q. (By Mr. Whitney): Now, Mr. Short, was there anything wrong with signing up for that payment in September, 1954, for work that had been performed in between January and March, 1954?

A. There were lots of them who did the same thing. They made an original application, changed it, and then changed back to their original application, and they got the money, sir.

Q. Were there some farmers transacting business through your office who performed the work before they made any application at all, and then came in and told what was done?

A. Yes, sir, if they told me that, I would tell them, "You [483] are just too late. We can't get you in the ACP, because you have to sign the application before you can get any money."

(Testimony of Joe L. Short.)

Q. You don't know of any that were paid?

A. Not that I remember.

Q. Not while you were there?

A. Not that I remember, sir.

Q. Now, in the years of 1954, 1955, and 1956—this is a general question—when these three checks were issued to you, the first for \$1620, the second for \$1410, and the third for \$1750, you led Mr. Neely to believe, didn't you, that there was a Burns farm?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. And he relied upon your representation, as far as you know?

A. I thought so, sir.

Q. And you remember when he gave you a check dated March 20, 1954, for \$1620, or you ran the check through, and the payment was stopped?

A. At that time, I didn't know it was stopped. It was told to me that it was insufficient funds, or something like that, but the check come back, yes, sir.

Q. The check was finally stopped, and you finally got it back? [484]

A. Yes.

Q. After you got that check back, didn't Mr. Neely ask you for a lease, to get a lease for this Burns farm?

A. There was some talk about a lease, and I told him I could get the leases for him, yes, sir.

Q. And you did get the lease, that is, you purported to get the lease?

A. That is right, sir.

Q. And you told Mr. Neely that it was a lease

(Testimony of Joe L. Short.)

signed by Mr. Burns? A. That is right.

Q. And at that time when you delivered the lease on April 5th, 1954, he gave you a new check for \$1620? A. Yes, sir.

Q. Which went through? A. Yes, sir.

Q. And you got the money? A. Yes, sir.

Q. Now, referring to this first check here that the payment was stopped on, Defendant's Exhibit M in evidence, that, of course, is your signature on the back of that check? A. Yes, sir.

Q. And I notice it says, "For Deposit Only, Joe Short Business Account." A. That is right.

Q. How many accounts did you have?

A. At that time I had only one account. I was thinking about starting another one, but I never did do it.

Q. Wouldn't you think that that would lead Mr. Neely to believe that that was in your business account, before he gave you the second check, and that that money went to Burns?

Mr. Hays: I object, your Honor.

The Court: Oh, yes, sustained.

Q. (By Mr. Whitney): Now, Mr. Wolf, he knew—Mr. Wolf of the State Office knew about this Farm 595, didn't he?

A. Yes, he was in the State Office later.

Q. How long did he know about it?

A. Oh, from February or March, 1954, until now.

Q. And you told him that he better leave it on the records? A. Yes, sir.

(Testimony of Joe L. Short.)

Q. For what purpose did you tell him that?

A. I think I explained that awhile ago. You want me to re-explain it, sir?

Q. No, that will be enough, if you explained it awhile ago.

Now, Mr. Neely at no time during the years 1954, 1955, and 1956 knew that he was operating under a fake lease, or under a fake allotment, isn't that right?

A. Not that I know of, sir. He thought it was all all right.

Q. In other words, you led him to believe that?

A. Yes, sir.

Q. And he inquired of you each time about the Burns allotment, or the Burns lease?

A. Yes, sir.

Q. Subsequent to the time he got the one in 1954?

A. That is right, sir.

Q. Now, Mr. Short, you made a statement to the Government which is dated Eloy, Arizona, January 14, 1957, in evidence here? A. Yes.

Q. And you now stay with that statement?

A. I changed one part of that statement, sir. That was on the 578, and I don't know whether it is in that statement, or later conversations.

At that time I thought he plowed up 55 acres. I have found out since then that he only plowed up 15 acres, and it comes back into my memory.

Q. But you thought after you had looked at his farm, after he gave you the \$10 measurement fee, that he was in compliance? A. Oh, yes, yes.

(Testimony of Joe L. Short.)

Q. And he thought so?

A. I think so, sir.

Q. Now, Mr. Short, of course I remember that, I know that you can't remember every dollar and cents. In this statement, among other things, you said that during each of the three [487] crop seasons mentioned above, "I accepted money from cotton producers in exchange for obtaining additional cotton allotments for them. I led these producers to believe that I obtained such allotments either from my own farm, or through a deal with other producers who had allotments which were unplanted. They trusted me, and, as far as I know, they believed my representations."

Now, then, you say the names of the producers. I am only interested in Mr. Neely. I haven't any business with any of the others.

A. Yes, sir.

Q. "The names of the producers and the amounts they paid are as follows: Rex Neely paid me \$1800."

You mean \$1,520, didn't you?

A. At that particular time I didn't have any checks in front of me. I gave them a figure, and until they got the checks, we didn't know exactly how much.

Q. The second one was for \$1,600, and the third one was \$1,750, is that correct?

A. Yes, sir.

Q. Did Mr. Neely ever give you a nickel in cash, other than as represented by these checks, except the \$10 measurement fee?

A. No, sir.

Q. Now, Mr. Short, the Government charges you in Counts VII, [488] VIII, IX, X, and XI with

(Testimony of Joe L. Short.)

making false entries in certain books, concerning, apparently, Mr. Neely's farm.

Did Mr. Neely know anything about that?

A. No, sir, not that I knew of.

Q. Did he ever see the books, that you know of?

A. Not that I know of, sir.

Q. Did he have anything to do with those books?

A. No, sir.

Q. As far as you know, did he ever make an entry in those books?

A. Not other than his signature on certain documents.

Q. You mean on those documents introduced in evidence? A. Yes.

Q. I am talking about the official listing sheets.

A. No, sir.

Q. Did he ever make any entries, or know anything about any fictitious entry made by you, if it was made, on the release and reapportionment supplement sheets? A. No, sir.

Q. Did he know anything about making a fictitious entry charged to you on the Revised Notice of Allotment for Farm 647, for the 1954 crop, a record made in connection with your duties, by indicating thereon 400.8 acres? Did he know anything about that?

A. That is a very long sentence, sir, and I forget the [489] first part of it, but let me say it this way. He didn't know anything about the 400.8, except that I told him that was his allotment, and gave it to him.

(Testimony of Joe L. Short.)

Q. And you sent him up an allotment notice to that effect? A. Yes, sir, gave it to him.

Q. Signed by some member of the Committee?

A. That is right.

Q. He didn't aid, abet, and induce you to do that, did he? A. No, sir.

Q. On the August 18, 1955, you are charged with making a false and fictitious entry as to Form 647, that is Neely's farm, on Form 578, of the Pinal County Agricultural Stabilization and Conservation Committee office for the 1955 crop year, by indicating thereon 120.4 acres of cotton destroyed.

I believe you state that you put those red figures on there after the thing was made up by Neely?

A. Yes, sir.

Q. Neely didn't aid, abet, or encourage you to do that, did he? A. No, sir.

Q. Count XI, on the same date you are charged with making a false and fictitious entry as to Farm 647, Neely's farm, long staple cotton on Form 578, 1955 cotton crop year by indicating thereon 1.8 acres, knowing the entry to be false. [490]

Did Mr. Neely have anything to do with that?

A. No, sir.

Q. Did he aid, abet, or induce you to do it?

A. No, sir.

Q. Now, did you, Mr. Short, have any understanding or agreement with Neely, express or implied, to form a conspiracy to defraud the United States? A. No, sir.

A. At no time?

A. Not at any time, sir.

(Testimony of Joe L. Short.)

Q. I believe you testified that Neely did not know anything about the Dunkin matter at all?

A. That's right, sir. I testified to that.

Q. You heard Mr. Neely testify that he didn't even know Dunkin?

A. Well, that might be so, sir.

Q. Now, you met Mr. Neely at first on the 19th of December, 1956? A. Yes.

Q. And do you remember the conversation you had with him at that time, what it related to?

A. Well, I think we have already gone over this once, but if you want me to, I will go over it again.

Mr. Whitney: All right, we will pass that. I think that is all. [491]

Cross Examination

Q. (By Mr. Hays): Mr. Short, you have gone over the indictment previously, haven't you? You have read it over?

A. Yes, sir. It has either been read to me, or I have read it.

Q. You did accept a check from Mr. Neely in the amount of \$1,620 for cotton allotment, is that correct? A. Yes, sir.

Q. And you did accept another check in the amount of \$1,410 for cotton allotment for 1955?

A. Yes, sir.

Q. And you accepted another check for \$1,750 from Mr. Neely for cotton allotment?

A. That is right.

Q. For the year 1956? A. Yes.

(Testimony of Joe L. Short.)

Q. Those checks were deposited in your account, is that correct? A. That is right.

Q. You made use of those moneys yourself to pay off obligations and to draw on?

A. Yes, sir.

Q. Did you have any sort of agreement or arrangement with the County Committee whereby you were authorized to receive [492] moneys for cotton allotment? A. No, sir.

Q. Now, in the years mentioned in the indictment, it has been alleged that you made certain false entries in the records, specifically, that you made a false and fictitious entry on the official Listing Sheets of the Pinal County Office for the 1954 crop year, by indicating thereon 400.8 acres of cotton allotment acreage apportioned to Farm 647, well knowing the entry to be false.

Now, did you do that? A. Yes, sir, I did it.

Q. And with regard to the acreage allotment release by Farm 595, did you make that false entry?

A. Yes, sir. I will have to say on that answer, sir, I am pretty sure that I have signed the MQ-29(a), and that is where your release comes from, and I signed it, sir.

Q. Well, you know these other false entries which are alleged in the indictment. Did you make those entries as alleged?

A. Where I have testified that I did so, yes, sir.

Q. Let us get into your specific testimony.

The Court: We will have our afternoon recess.

(The afternoon recess was taken.)

(Testimony of Joe L. Short.)

The Court: You may continue.

Mr. Hays: I would like to have that marked for [493] identification, whatever the Government's next number is.

The Clerk: Government's Exhibit 26 for identification.

(Said Field Sheet was marked as Government's Exhibit 26 for identification.)

Q. (By Mr. Hays): Mr. Short, I hand you Government's Exhibit 26 for identification, and see if we can't explain this ACP a little more.

Have you seen that before?

A. Yes, sir, I have seen it.

Q. And what is it?

A. This is a 1953 Supervisor's Field Sheet.

Q. And by whom is it signed?

A. It is signed by me.

Q. Look at the writing. Was it prepared by you? A. Yes, sir.

Q. The handwriting. A. Yes, sir.

Q. And what is it for?

A. For some ditch. It looks like it might have been about a mile and a half of ditch.

Q. A mile and a half of ditch? A. Yes.

Q. And I call your attention to a figure right here. A. Yes. [494]

Q. Keep that in mind, if you will, please.

A. All right.

Mr. Hays: Mark that as Government's Exhibit 27 for identification, please.

(Testimony of Joe L. Short.)

The Clerk: Government's Exhibit 27 for identification.

(Said Application for Payment was marked as Government's Exhibit 27 for identification.)

Q. (By Mr. Hays): I will hand you Government's Exhibit 26 again. That pertains to the Farm 447, the farm of Rex L. Neely, doesn't it?

A. That is correct.

Q. All right, I will now hand you Government's Exhibit 27 for identification, and ask you to examine that series of documents.

A. Yes, sir.

Q. During 1953, or on 1953 ACP practices, Mr. Short, who did the inspection?

A. I did part of them, sir.

Q. The inspections were not turned over to Mr. Bates to do on that program, is that correct?

A. Not in 1953, no, sir.

Q. Not in 1953. They were handled by the ASC Office, or yourself?

A. Yes. [495]

Q. As clerk?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. And on those practices, you were doing the inspection, rather than Mr. Bates, is that right?

A. That is right.

Q. Now, you have examined that document.

Can you find any relationship between the two exhibits that I have handed you?

A. Yes, sir. As I said before, this is a Supervisor's Field Sheet for the 1953 ACP, and this is application for ditch lining, and this is the No-

(Testimony of Joe L. Short.)

tice of Approval, and this is a carbon copy of his application for payment.

Q. And they involve the same practice, apparently, don't they? A. Yes, sir.

Q. Calling your attention to that same figure again. A. Yes, sir.

Q. They involve the same practice?

A. That is right.

Mr. Hays: Just hold on to those exhibits, if you will.

Will you mark that for identification.

The Clerk: Government's Exhibit 28 for [496] identification.

(Said Application for Payment was marked as Government's Exhibit 28 for identification.)

Q. (By Mr. Hays): Mr. Short, I hand you Government's Exhibit 28 for identification, and ask you to examine that as well. What is that? Or, in fact, I should say what are those documents, because there are about three sheets there.

A. This is a Form ACP-245, which is an application, an application for payment, and these are carbon copies.

Q. And for what application for payment, for what?

A. The farm number is what is the name, Mr. Hays.

Q. Payment for ACP practices?

A. Yes, sir, payment for ACP practices.

Q. For what year? A. For 1954.

(Testimony of Joe L. Short.)

Q. Do you find any similarity in those documents? A. Yes, sir.

Q. All right, what do you note there?

A. I note that the Extent Performed is the same as the one performed in 1953.

Q. And that appears to be for the same practice again, is that right? A. Yes, sir. Yes, sir.

Mr. Hays: Will you mark this.

The Clerk: Government's Exhibit 29 for [497] identification.

(Said Document was marked as Government's Exhibit 29 for identification.)

Q. (By Mr. Hays): I and you Government's Exhibit 29 for identification. A. Yes.

Q. What is that?

A. Well, this was taken out of number 12, I think, sir.

Q. Out of the folder over there? A. Yes.

Q. Go ahead.

A. This is a 247 for 1954 on concrete ditch lining, and it has some charts drawn on the back.

Mr. Whitney: Has some what on the back?

The Witness: Some charts.

Q. (By Mr. Hays): And it is an application for ACP for what year? A. For 1954.

Q. And is there any similarity in figures again, those figures? A. Yes, sir.

Q. I call your attention to——

A. The same figures in it, 237.4.

Q. Ostensibly, it covers the same ditch?

A. I would think so. Yes, sir, yes, sir. [498]

(Testimony of Joe L. Short.)

Q. All of these exhibits I have shown you apply to Farm 647, is that correct? A. Yes, sir.

Mr. Hays: At this time we will offer in evidence Government's Exhibits 26, 27, 28, and 29.

Mr. Whitney: I would like to ask a question on voir dire, referring to Exhibit 29.

The Court: All right.

Q. (By Mr. Whitney): Referring to Exhibit 29, what does that mean, where I notice the word "Cancel"?

A. It looks like they found out that this has been paid for the year before, and cancelled it. There is a note above that that says it is paid for under the 1952 ACP. I think that should have been 1953 ACP, and they cancelled it.

Q. They cancelled it? A. Yes.

Q. How about 27?

A. What were you talking about, sir?

Q. That seems to be work that was applied for under January 15, 1953, signed by Ray F. Wolfe for the County Committee. A. Yes, sir.

Q. And what years does that apply to?

A. 1953 ACP. [499]

Q. Was there anything indicating there that that was paid, or not?

A. I only have these other documents to prove that it has been paid. There are entries on the documents that said it was paid.

Mr. Whitney: No objection, Mr. Hays.

Mr. Stanfield: I have no objection.

The Court: They may be received.

(Testimony of Joe L. Short.)

The Clerk: Government's Exhibits 26, 27, 28, and 29 in evidence.

(Said Documents were received in evidence and marked as Government's Exhibits 26, 27, 28, and 29 respectively.)

Q. (By Mr. Hays): Now, Mr. Short, the regulations in 1954, 1955, and 1956 required an operator to be in compliance before the marketing cards were issued, didn't it?

A. Probably the regulations say that, sir.

Q. Regarding 1955, on your trip out to the Neely farm, after the issuance of the marketing cards, is it your testimony that you, with your eye, counting the rows, could more accurately measure 400 acres than the measuring crews who had previously been out there with tape and instruments to measure?

A. Well, I have seen those measuring crews make some pretty bad mistakes, and since I counted the rows, and the most the rows would be, would be 40 inches apart, I still [500] think I was right, sir.

Q. Is that the approved method, or was that the approved method of measuring rows for office purposes in the County Office in 1955?

A. In 1955. I will have to think a minute. I think in that year we used a deal——

Q. You mean a measuring wheel?

A. Yes. But, sir, on that measuring wheel, I can make it come off a hundred, or a thousand yards in a mile, or make it come under in a mile. I would rather count the rows than to use that wheel.

Q. Well, was counting the rows the method ap-

(Testimony of Joe L. Short.)

proved by the County Office at that time, that is my question?

A. No, sir, I was about the only one that counted the rows.

Q. You were about the only one that counted the rows? A. Yes, sir.

Q. And if that is an accurate method of determining the amount of cotton acreage, then there is no reason why any farmer couldn't come very close to his cotton acreage planted by using your system, is there?

A. If he uses the same formula that I used, I think he would come pretty close.

Q. With regard to the forms 578 in 1955, I will show them to you, if you wish.

A. I would like to see them, sir. [501]

Q. The ones with the red markings on them.

Here we are. I will refer you to Government's Exhibit 11-C and 11-B. Specifically with regard to the one that refers, now, to Short Staple Cotton.

A. Yes, sir.

Q. Which is Government's Exhibit 11-B.

A. Yes, sir.

Q. When you placed those red figures on there, your testimony is that you did, is that correct?

A. Yes, sir.

Q. When you placed those red figures on there, you showed sufficient destruction?

A. Yes, sir.

Q. To bring that farm down to the original allotment shown on the listing sheet?

(Testimony of Joe L. Short.)

A. That is right, sir.

Q. To show the farm in compliance, without regard to any allotment that had been given?

A. That is right, sir. I had done that before on other farms.

Q. I am not asking you about other farms. I just want to know about this one.

And according to your measurements, there were actually only 15 acres destroyed?

A. Yes, sir. Around 15 to 16 acres. [502]

Q. We won't quibble over an acre. 15 to 20, if you wish.

A. No, sir.

Q. I recall your testimony with regard to 1956. You thought of taking Mr. Neely's extra allotment, whatever we want to call it, out of the County Reserve, but never got around to changing the records?

A. That is right, sir.

Q. Isn't it a fact that in 1956, the reserve was a little overdrawn, and you had some problem of getting the Reserve in balance?

A. Not that I remember, sir. Up until the June or July when I started this work, working two days a week, there was still some reserve.

Q. What about the situation in 1955? Did you have any problem on reserve there?

A. Yes. I think that is right, sir.

Q. Is it your testimony now that you did not sign Doyle Dunkin's name, or that you don't remember signing it?

A. Sir, just as I have said it before, that paper is still a mystery to me. I don't remember signing it.

(Testimony of Joe L. Short.)

As I said here before, it looks like it could have been part of my handwriting, or something like that, but I don't remember signing it, and since it is an original document, and the only one that I ever saw that looked like it might have my handwriting on it, I think I would remember it. [503]

Q. But your testimony is you don't remember signing it? A. That is right.

Q. You do not positively state that it is not something that you have signed?

A. Sir, I would have to say just like I did before. It mystifies me.

Q. You stated that one reason for believing that was not your signature was because you had no reason to sign it, is that correct?

A. That is right.

Q. Had any of the other recipients of ACP funds paid you any money for allotments?

A. Sir?

Q. Had any other recipients of ACP funds paid you money for allotments?

A. No, sir, not that I—No.

Q. Don't you think you might have felt a little more kindly toward Mr. Neely for having paid you that year something over a thousand dollars?

A. No, sir. Because Mr. Neely only come in the office about four or five times a year that I would actually talk to him, and there are lots of people who come in there nearly every day, and, in fact, I just knew Neely, and that's about it.

Q. He is the only ACP recipient that had paid

(Testimony of Joe L. Short.)

you any money [504] for allotment, though, isn't he?
A. What?

Q. He is the only ACP recipient that had paid you money for allotment, though, isn't he?

A. I think that is right, sir. You kind of got me lost in that question.

Q. Now, with reference to ACP again, you stated that you had a very amicable relationship with Mr. Bates of the ACP program?

A. Yes, sir.

Q. And if you went over to Mr. Bates and said, 'Mr. Bates, there has been a little clerical error, or some delays here that are penalizing a farmer——'

A. Yes, sir.

Q. He would go ahead and approve things?

A. If it looks like it was all right, and he did it on his own accord, he never did turn me down, no, sir.

Q. I would like to ask you about one statement in your testimony, Mr. Short.

You said something in discussing how the total amount of allotment was secured from Mr. Neely, you said something about taking 73.1 acres from the Plummy farm, or Farm 595, and that you got 7 acres that had been entrusted to you.

Did you have an acreage trust fund, or something [505] that you could just take it out of, or what is the situation?

A. In 1954, sir, there was no water in the project area in that county. Lots of farmers would come in and tell me, "I have some cotton acreage out here

(Testimony of Joe L. Short.)

that I can't plant, because I can't get the water. If you can do anything for me, I will sign a release, see if you can protect my history."

Lots of that went into the County Committee Reserve Fund, or if they ran out of reserve, they could use the release.

Q. What farm or farmer did that 7 acres come from?

A. That would be hard to say. I really don't know.

Q. You wouldn't be able to find out right now, would you?

A. I don't know any records that would prove what I would say, and I really don't know the answer to it, sir.

Q. Really, you just took it out of the air, now, didn't you? A. No, sir.

Mr. Hays: No further questions.

Further Cross Examination

Q. (By Mr. Whitney): Mr. Short, getting back to this ACP practice, isn't it a fact that Neely constructed a cement ditch one and a half miles in 1953, under a 1953 practice? A. Yes. [506]

Q. Is that right?

A. That's what I read off the document, sir, and I approved it, so I am sure I checked it, yes, sir.

Q. And he got paid for it in 1954?

A. That's right.

(Testimony of Joe L. Short.)

Q. By the check that I introduced in evidence awhile ago?

A. Well, I didn't see the check, but you said it was for the 1953 practice, sir.

Q. This Treasurer's Check dated April 20, 1954, for 1953 ACP program (handing to witness)?

A. Yes, sir, it says 1953 ACP Program, yes, sir.

Q. Okay. Now, Mr. Short, isn't it a fact that Neely constructed a cement ditch A to B?

A. That is——

Q. Wait a minute. In 1954, under the 1954 practice? A. Yes, sir, I think so.

Q. And he got paid for that, for a 1954 ACP program or practice?

A. Yes, sir, with this check.

Q. Is there anything wrong in getting paid for a 1953 practice actually constructed in 1953?

A. Under what program?

Q. Under a 1953 program?

A. No, there is nothing wrong with it.

Q. And even if it is paid for in 1954, there is nothing [507] wrong with it?

A. Only if it was within certain dates.

Q. How about this date, referring to Defendant's Exhibit R in evidence?

Mr. Holohan: I object to pursuing that. It is a matter of law, and we have never raised any issue about the 1953 ACP practice.

Mr. Whitney: You may admit that is correct, then?

Mr. Holohan: That is correct.

(Testimony of Joe L. Short.)

Mr. Whitney: All legal?

Mr. Holohan: All legal, a check for April.

The Court: All right.

Mr. Holohan: So we will just save time on it.

Mr. Whitney: Thank you. That is all.

Redirect Examination

Q. (By Mr. Stanfield): One more question, Mr. Short.

I believe on direct examination, that you stated that you had told the, or probably told the agents that you involved yourself in this predicament, and you referred to easy money, I believe.

Could you explain what you meant by that?

A. Well, in other words, the Case Grande Country Club [508] was selling their allotment at an auction, and there were other farmers who were selling their allotment for money.

I was doing this sort of stuff all the time. And since we had some extra acres, I thought I ought to capitalize on it.

Mr. Stanfield: I see. That is all.

Mr. Hays: No further questions.

Mr. Stanfield: That is all I have at this time.

Mr. Whitney: No further questions, Mr. Short.

(Witness excused.)

Mr. Whitney: The Defendant Neely rests.

Mr. Stanfield: We rest.

Mr. Holohan: We have a little rebuttal, your Honor.

The Court: All right.

Mr. Holohan: I call Mr. Parsons, please.

WALTER E. PARSONS

called as a witness in behalf of the Government, for rebuttal, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Holohan): Would you state your name, please? A. Walter E. Parsons.

Q. Would you hand me those documents that you brought [509] with you?

A. Yes. (Handing to counsel.)

Q. By whom are you employed?

A. Soil Conservation Service, an agency of the United States Department of Agriculture.

Q. And what is your job?

A. Well, I am a conservationist for the Casa Grande Work Unit, Casa Grande, Arizona.

Q. In your job down there at Casa Grande, do you have custody of the records of that office?

A. Yes, sir, the records for Casa Grande Work Unit.

Mr. Holohan: May these be marked as documents for identification, each one separately, please.

Q. (By Mr. Holohan): When did you take over your job down in Casa Grande?

A. July 29th, 1958. That could be a day or two either way. It was in July, 1958.

Q. I will hand you what has been marked Government's Exhibit 30 for identification. Is that one of the records of your office? A. Yes, sir.

(Testimony of Walter E. Parsons.)

Q. Is that kept in the regular course of governmental business?

A. Yes, sir. This is kept in the file with ACP Referrals that we handle for ASC Office. [510]

Q. It is one that is required to be kept in the regular course of your governmental business?

A. Yes, sir.

The Clerk: Government's Exhibits 30, 31, and 32 for identification.

(Said Documents were marked as Government's Exhibits 30, 31 and 32 for identification.)

Q. (By Mr. Holohan): You have been speaking about Government's Exhibit 30 for identification, and I will hand you what has been marked Government's Exhibits 31 and 32 for identification.

Will you tell us what those are.

A. Yes, sir, these are what we call Grid Sheets. They are engineering work productions made by our employees in our office.

Q. All right, does 31 and 32 come from your records in Casa Grande? A. Yes, sir.

Q. And are they records of which you have custody? A. Yes, sir.

Q. And are they records kept in the regular course of business there? A. Yes, sir.

Q. And required to be kept as such?

A. Yes, sir. [511]

Q. Now, were you asked to bring, or to search your records for a document or documents concerning a 1954 ACP practice for a half mile ditch?

(Testimony of Walter E. Parsons.)

A. Yes, sir.

Q. On the Neely Farm 647? A. Yes, sir.

Q. Were you able to find any such record?

A. We have no records there in our 1954 files on a ditch lining job of Mr. Neely's.

Mr. Holohan: That is all I have of you. You may cross examine the witness.

Cross Examination

Q. (By Mr. Whitney): Have you a record in the 1953 file for that application?

A. I searched the 1954 file, sir.

Q. For 1954 practice? A. Yes, sir.

Q. Have you any record——

A. Of 1953?

Q. No, made in the fall of 1953, for the 1954 practice?

A. No, sir. That would be our records for the 1954 program. Here would be everything that come in from October, 1953, until December 1954. Our program year and the annual calendar year do not coincide. [512]

Mr. Holohan: I intend to call other witnesses to explain that matter to you. This witness merely has the custody of the records.

I understand you came in 1958 to the office?

The Witness: 1958, yes.

Q. (By Mr. Whitney): You haven't examined the records for 1953?

A. For 1953, no, sir. But as I have explained, we could have some 1953 dates that would be in 1954,

(Testimony of Walter E. Parsons.)

and some 1952 that would be in 1953, because the year starts in October, September or October.

Mr. Whitney: That is all. You are going to call another witness?

Mr. Holohan: Yes.

Mr. Stanfield: I have no questions.

Mr. Holohan: Thank you.

(Witness excused.)

Mr. Holohan: Mr. Bates.

RAY W. BATES

called as a witness in behalf of the Government, for rebuttal, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Holohan): State your full name.

A. Ray W. Bates.

Q. By whom are you employed, sir?

A. The United States Department of Agriculture, Soil Conservation Service.

Q. And in what capacity?

A. Work Unit Conservationist.

Q. Where are you presently stationed?

A. In Tucson.

Q. In the year 1954, where were you stationed?

A. Casa Grande.

Q. How long were you stationed at Casa Grande?

A. Approximately 5, 5 and a half years.

Q. What dates, within what years?

A. 1952 to 1958.

(Testimony of Ray W. Bates.)

Q. All right, sir. Do you know the Defendant Joe Short? A. Yes, sir.

Q. Do you know the defendant Rex L. Neely?

A. Yes, sir.

Q. I would like to hand you Government's Exhibit 29 in evidence and Government's Exhibit 30 for identification, and ask you whether your signature appears on those documents?

A. Yes, sir, they do.

Q. All right. And I will hand you 12-B, which is also in evidence, and ask you whether your signature appears on that document? [514]

A. Yes, sir.

Q. And where does your signature appear?

A. (Witness indicates.)

Q. Ray W. Bates there on 12 in evidence?

A. Yes.

Q. And the document is dated 7/23/54, is that correct? A. Yes.

Q. 30 for identification, does that also bear your signature? A. Yes, sir.

Q. And the date? A. Yes, sir.

Q. All right, is there any relationship between 12-B and 30 for identification?

A. One is a carbon copy of the other.

Q. All right. On this, what kind of a form are those documents?

A. Well, we call them by form numbers 247.

Q. And on this Soil Conservation Service setup, what are those 247's? What do they mean, and how are they handled?

(Testimony of Ray W. Bates.)

A. Well, they are requests for us to give assistance now and then to farmers in applying these practices that are listed on the 247.

Q. All right, what do you mean by that, to give assistance?

A. Determining if they are needed, the practice, and then [515] do the survey and check them out as completed.

Q. How are the 247's handled?

A. From the beginning, when we receive them?

Q. All right, from the beginning when you receive them.

A. We receive three copies from the ASC County Committee, and when the need is determined, we sent that in on one copy.

Q. You send one copy back to them?

A. Yes.

Q. All right.

A. And after it is completed, and we certify it, we send another copy to them, and we keep a copy.

Q. Government's Exhibit 30 is a carbon, then, of this 12-B?

A. Yes, sir.

Q. Can you identify that handwriting, "Cancelled 11/8/54"?

A. Well, I assume it is the secretary in the office. It looks like her writing. It isn't my writing.

Q. It is not yours, but it appears to be your secretary during that period?

A. Yes.

Q. This concerns what practice, 12-B and 30 for identification?

A. Land leveling.

(Testimony of Ray W. Bates.)

Q. All right, and is there a farm number connected with that? [516]

A. A farm number?

Q. Yes. A. 86011-647.

Q. Dash 647. All right. That is the last part of it, 647, and it is for what year?

A. That is for the 1954 ACP.

Q. Now, I will hand you what has been marked Government's Exhibit 29 for identification, and ask you to—or, I guess, is that identification or in evidence. That is in evidence, and ask you to look that over, and your signatures appear thereon?

A. Yes, sir.

Q. Is that the R. W. Bates (indicating)?

A. Yes.

Q. Those signatures are yours?

A. Yes, sir.

Q. You will have to speak up louder so that the people at the end of the row can hear you. So speak loudly, please. A. Yes.

Q. All right, this handwriting appearing under the section, "Report of Performance," whose handwriting is that? A. Here?

Q. This little section here above the signature and date. A. It looks like mine.

Q. All right. Now again referring you to Government's [517] Exhibit 29 in evidence, Practice Units Performed, who puts that in?

A. Normally, I do.

Q. All right. Does that appear to be your writing on there? A. It looks like it, yes.

(Testimony of Ray W. Bates.)

Q. All right. And for what practice is this?

A. Concrete ditch lining.

Q. I beg your pardon?

A. Concrete ditch lining.

Q. And the Report of Performance, what is that date?
A. February 8th, 1954.

Q. Again referring you to Government's Exhibit 29, under the statement of Need, which bears your signature, that date is 11/23/53, is that correct?

A. Yes, sir.

Q. All right. How is the sequence between this statement of need, and report of performance? What do you go through on that?

A. Well, after we determine the need, on the concrete ditches, the contractor does the surveying on most of it, and we get the information from them, from their survey notes, and determine the need.

And after the practice is put in, we go out and check it and see that it is in and measure it, turn it in for [518] completion.

Q. In other words, your end of it is the technical side?
A. Yes, sir.

Q. On the date do you go out and inspect the land for need?

A. Are you talking about land leveling, or ditches?
Q. Or for ditches, either one.

A. Somebody from the office does.

Q. Somebody will go out and check the land?

A. Yes.

Q. Then that is, I take it, communicated to you.

(Testimony of Ray W. Bates.)

You were then head of the office down there, weren't you? A. Yes, sir.

Q. In those years? A. Yes.

Q. And you actually signed the reports going out? A. Yes, sir.

Q. These 247's that you have reference to?

A. Yes, sir.

Q. Now, on the matter of performance, how is that handled, then?

A. Well, after we check it out, if it meets specifications, why, we enter the amount performed, and I sign it and send it back in.

Q. All right. I will hand you what has been marked [519] Government's Exhibit 31 for identification, and ask you to examine that document. Do you know by whom that was made out?

A. Charles Woody.

Q. And I will hand you what has been marked Government's Exhibit 32 for identification, and ask you to examine that document, and if you know by whom that was made out.

A. Well, that was by Dick Ackley, surveyor.

Q. Did you have anything to do with that?

A. No, sir.

Q. Again, these are documents that are reported to you in the office? A. Yes, sir.

Q. Now, in these documents, do they show the dates when these actions are taken?

A. July 16th, 1954.

Q. This as to Government's Exhibit 32 for identification, that you have stated the date in July?

(Testimony of Ray W. Bates.)

A. Yes.

Q. What does this type of document relate to?

A. Land leveling.

Q. It relates to land leveling? A. Yes.

Q. Is there a description of the land, without reading it, is there a description of the land that is involved? A. Yes, sir. [520]

Q. Now, can you tell us whether this is an inspection for need or for performance?

A. This was for need.

Q. In other words, the job hadn't been done yet. It is surveyed for need?

A. Yes, sir. It is for determining the need.

Q. When did the Soil Conservation Service start its technical assistance under the ACP program?

A. In 1952, I believe.

Q. Were you assisting the ASC Committees prior to 1954? A. Yes.

Q. Do you know a Doyle Dunkin?

A. Yes, sir.

Q. Do you know by whom he was employed in 1954, and that period?

A. The Department of Interior.

Q. And your department, Soil Conservation, is what department? A. Agriculture.

Q. He didn't work under your office at all, did he?

A. No, sir. I might qualify that statement. On Indian land, when we get the 247's, we send them to the Indian Service, if it is on Indian land, to serv-

(Testimony of Ray W. Bates.)

ice them, then they send them back through our office.

Q. It actually was transmitted through you people where [521] Indian land was involved?

A. Yes, sir.

Q. In other words, Reservation land?

A. Yes.

Q. Now, Mr. Woody is here, isn't he?

A. Yes, sir.

Q. As a witness here? A. Yes.

Mr. Holohan: You may cross examine.

Cross Examination

Q. (By Mr. Whitney): Mr. Bates, Mr. Neely started to do some land leveling as a 1954 practice, did he not? A. Yes, sir.

Q. And that was not approved, is that right?

A. That is right.

Q. And he was never paid for it?

A. That I don't know.

Q. Well, as far as I know, you have no record on it? A. No, sir.

Q. Did you ever approve anything for payment on it? A. In 1954?

Q. Yes, for land leveling. [522]

A. I don't recall of approving any.

Q. You have no records to show?

A. No, sir.

Q. Now, in 1954, on the 1954 practices, did you know that Neely made an application first in November, 1953? A. I don't remember.

(Testimony of Ray W. Bates.)

Q. Well, anyway the evidence shows that on November 5th there was an application made for ditch lining, \$1,500, for the 1954 practice. Do you know whether that ditch was ever put in?

A. Well, I don't know which ditch they are talking about.

Q. Well, were there two ditches put in in 1954?

A. I couldn't say. I can't remember that far back.

Q. Wouldn't your map show it?

A. Yes, if you get the records here.

Q. I don't know anything about it. What is this?

Mr. Whitney: Is this the one you showed him?

Mr. Holohan: Yes. That is land leveling.

Q. (By Mr. Whitney): Referring to Government's Exhibits 31 and 32, does that show anything about a ditch put in in 1954 by Mr. Neely?

A. No, sir. This concerns land leveling.

Q. I see. You have nothing on ditches?

A. Not in my possession, no.

Q. Do you know as a matter of fact whether Mr. Neely put [523] a ditch in in 1954, between January and March, 1954?

A. I couldn't say.

Q. Do you know whether he applied for payment and did put in a ditch in September, 1954?

A. Well, if I had the 247's, I could answer it.

Q. Now, you say that he did no land leveling, that is, he wasn't paid for any?

A. Not that I remember.

(Testimony of Ray W. Bates.)

Q. You know you disapproved it, didn't you, the leveling?
A. Yes, sir, that one job.

Q. And that is represented by Government's Exhibit 12-F in evidence, and 30, about that land leveling, that is right?
A. That is right.

Q. Now, referring to Government's Exhibit 12-D, and E, Government's Exhibits D and E, first. That is dated June 1st, 1953, for a concrete ditch lining, supposedly approved by Dunkin. Do you know anything about that?

A. It never came through our office.

Q. On the back of Government's Exhibit 12-B, do you see that drawing there, that section of land?

A. Yes, sir.

Q. What does that represent?

A. The location where this 5000 yards of dirt was to be moved on this section up here.

Q. And that was not done? [524]

A. It was not completed.

Q. And was not approved nor paid for?

A. We didn't check it out.

Q. I see. The concrete ditch lining which was approved by you on November 5th, 1953, when was that done?

A. It should have been somewhere between the 3rd of November, 1953, and February 8th, 1954.

Q. I see. And if that was done at that time, and not paid for in 1954 until September, 1954, there would be nothing wrong with it, would there?

A. I don't know. We don't have anything to do with the payment.

(Testimony of Ray W. Bates.)

Mr. Whitney: That is all.

Mr. Stanfield: No questions.

Mr. Holohan: May this witness be excused subject to recall?

The Court: He may be.

Mr. Whitney: Subject to recall?

Mr. Holohan: That is right.

(Witness excused.)

Mr. Holohan: I will call Mr. Woody. [525]

CHARLES WOODY, JR.

called as a witness in behalf of the Government, for rebuttal, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Holohan): Tell us your full name?

A. Charles Woody, Jr.

Q. Who do you work for?

A. United States Department of Agriculture, Soil Conservation Service.

Q. What is your job with them?

A. At the present time, I am employed as Soil Conservation Aide.

Q. Do you know the Defendant in this case, Joe Short?

A. Yes, sir.

Q. Do you know the Defendant Rex Neely?

A. Yes, sir.

Q. Have you known them over some period of time?

A. Well, I have known them since 1954.

Q. All right. Where are you presently stationed?

(Testimony of Charles Woody, Jr.)

A. Benson, Arizona.

Q. In 1954, where were you stationed?

A. Casa Grande, Arizona.

Q. When were you stationed at Casa Grande?

A. May, I was up there. I came from Yuma to Casa Grande in May of 1954.

Q. Of what year? 1954? A. 1954.

Q. Are you familiar with the Neely piece of land there in Pinal County, that Section 13?

A. That is out by Maricopa?

Q. Yes, the city of Maricopa. A. Yes.

Q. Have you in your capacity with the Soil Conservation Service gone to that land for official purposes? A. Yes.

Q. Did you go there in 1954? A. Yes.

Q. What was your purpose in going there in 1954?

A. To check the leveling grid on a portion of the farmland, leveling grid.

Q. Would you take the chalk for us, please, and draw the section?

A. (Witness draws on blackboard.) "Indian Reservation." Bill Chatham's home is over here (indicating).

There is a well approximately here, at this time, in 1954. I haven't been back to the farm since. There was a ditch here.

There was a road, farm road in here, and all the [527] way through, if I remember correctly. There was machine sheds here. I believe there was a well

(Testimony of Charles Woody, Jr.)

here, with some houses, and I believe there was a well here.

This section or portion of land that I was on in 1954 was this (indicating).

Q. That was the land leveling practice that you were sent to inspect in 1954?

A. That is right.

Q. You have also inspected other land leveling on that same land, haven't you, in this same section? A. Yes.

Q. In what year?

A. The last time I was there was in 1956.

Q. And what was that land leveling, what area was that covering?

A. It was in this area here. This is in 1956. (Indicating.) That was this portion.

Q. That is the upper northern portion, then?

A. Yes.

Q. The crossbars of the section, or the portion of the land is 1954? A. Yes, 1954.

Q. Take your place, please.

Would you look at 31 for identification, and see whether you recognize that. [528]

A. This is the portion of the farm I was on in 1954.

Q. All right. And what is the document?

A. The document, as stated on the bottom, "Rex Neely, Grade Check of August 13th, 1954."

Q. Who made up the document?

A. I made it up.

Q. And as a result of what?

(Testimony of Charles Woody, Jr.)

Q. As the result of checking a land leveling job on this portion of the field.

Q. When did you check the land leveling?

A. Apparently August 13th. I apparently did the field work probably the day before. The field notes, engineering field notes would show that, and I made this probably the following day, or so.

Q. That is in August of 1954?

A. That is right.

Q. Did you have any conversation with the Defendant concerning this land leveling, the Defendant Rex Neely?

A. Concerning this land leveling? Yes, I did.

Q. All right, did you make a note of that conversation? A. Yes.

Q. And on that same document? A. Yes.

Q. (Handing document to witness.) What is 32 for identification? [529]

A. This is the original leveling grid or skin sheet, or grid sheet with the computations for the required land leveling on this particular section, and this particular portion of the farm.

Q. Do I understand you, then, you go out and run a survey on it first to show what should be done, and then the next is you check it to see whether that has been done?

A. That has been accomplished, that is right.

Mr. Holohan: At this time, we offer in evidence Government's Exhibits 30, 31, and 32 for identification.

Mr. Whitney: If the Court pleases, we object

(Testimony of Charles Woody, Jr.)

to them on the grounds there is no charge in the indictment in connection with the land leveling, and I fail to see the materiality or the competence of this testimony, on that ground.

The Court: It may be received.

Mr. Stanfield: No objection.

The Clerk: Government's Exhibits 30, 31, and 32 in evidence.

(Said Documents were received in evidence and marked as Government's Exhibits 30, 31, and 32 respectively.)

Q. (By Mr. Holohan): Now, I will show you what has been marked Government's Exhibit 31, I believe it is. A. Yes.

Q. 31 in evidence. You said that you had a [530] conversation with the Defendant which you noted down? A. Yes.

Q. Now, I call your attention to a note up here on the right-hand corner of the exhibit, and is that in your handwriting?

A. It is. It is in my printing.

Q. All right, your printing. Okay. Would you read that for us.

A. "This sheet was mailed to Mr. Neely August 13, 1954. He informed us that it had never been made available to contractor as was intended."

And my initials.

Q. Now, this note section, was that also in your handwriting? A. It is.

Q. All right, would you read that.

A. "Note: Mr. Neely came and informed us con-

(Testimony of Charles Woody, Jr.)

tractor had notified him the field was to grade, and that I had informed them that it was. The field was not to grade at the time of this check and no information was given out to indicate that it was. Mr. Neely informed us that all stakes have been pulled and field deep plowed eliminating possibility of further check."

And my initials.

Q. All right. From that document, does that show that [531] the land leveling was done in accordance with your standards?

A. No. No, there was still work to be done.

Q. So it was not approved then?

A. No. Well, I mean as far as I was concerned, it was not.

Q. You made your report as——

A. That there was still work to be done.

Q. That was as to the land leveling?

A. That is right.

Q. All right. Could you tell us what was basically this land leveling? What was it? What was it that was going to be done, as you recall?

A. Well, as I recall, there was to be leveled a tenth of a foot plus or minus tolerance, and when I went back to re-stake it, re-grid it, get new elevations on it, I took the shots halfway between the stake lines, and adjusted the computed elevations, because often contractors leave the centers high or low.

Q. The places that are staked, they are usually level, but some of those places halfway aren't?

(Testimony of Charles Woody, Jr.)

A. Yes. And I recomputed the grade and the elevation that I got, and it didn't conform.

Q. It didn't conform. All right. Was there something about also some of the land being low?

A. Well, it is indicated there on the sheet, yes.

Q. I don't think many of us can read that, [532] but from your recollection, could you give us any help on the board as to that?

A. At the time of the check, if my memory serves me correctly, and I am sure it does, there was a low area in here (indicating on diagram) below the well, or to the west of the well, and there was highs in here.

The stake lines had been broken out to grade, but the center of the panel and the two stake lines were not.

Q. You don't have anything to do with payment?

A. No.

Q. You just go out and do the technical survey work?

A. That is right.

Q. And report what you find?

A. That is correct.

Q. Who do you report to?

A. I was reporting to Mr. Ray Bates, working in conservation.

Mr. Holohan: You may cross examine the witness.

Mr. Whitney: I don't think I have any questions.

Mr. Stanfield: I have no questions.

The Court: That will be all.

(Testimony of Charles Woody, Jr.)

Mr. Holohan: May this witness be permanently excused?

The Court: He may be.

(Witness excused.) [533]

The Court: The court will stand at recess until ten o'clock in the morning.

(An adjournment was taken to Thursday, September 18, 1958, at ten o'clock a.m.) [534]

Thursday, September 18, 1958

Ten O'Clock A.M.

Court convened pursuant to adjournment.

Present: Same as before.

The Court: You may continue.

Mr. Hays: The Government rests with its rebuttal, your Honor.

The Court: Do you have any surrebuttal?

Mr. Stanfield: Defendant Short has none.

Mr. Whitney: Mr. Patterson, please.

J. E. PATTERSON

called as a witness in behalf of the Defendant Jeely, in surrebuttal, having been first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Whitney): State your name, please.

A. J. E. Patterson. [535]

Q. Where do you reside, Mr. Patterson?

A. Chandler, Arizona.

Q. What is your business?

(Testimony of J. E. Patterson.)

A. It is custom tillage and leveling.

Q. Do you know Mr. Rex L. Neely?

A. I do.

Q. Have you done or performed any tillage work, or leveling, rather, for Mr. Neely?

A. I have.

Q. For how long a period of time?

A. Oh, for the past ten years.

Q. Do you remember doing any work for Mr. Neely for which you billed him on February 13, 1954?

A. Yes, sir.

Mr. Whitney: Mark this, please.

Mr. Holohan: We have no objection to its being marked and introduced in evidence.

Mr. Whitney: All right.

The Court: It may be received.

The Clerk: Defendant's Exhibit T in evidence.

(Said Statement of Account was received in evidence and marked as Defendant's Exhibit T.) [536]

Q. (By Mr. Whitney): Now, Mr. Patterson, referring to this writing here, this map, this is supposed to be north, and this south. This is east, and this is west. (Indicating on blackboard.)

Referring to this Defendant's Exhibit T in evidence, can you tell me which quarter-section you were working on at that time, if you know?

A. No, I can't tell you.

Q. Have you ever worked on the northwest quarter of this section?

A. We have levelled all four quarters of this

(Testimony of J. E. Patterson.)

section, but I don't know which one of these is which. I don't have any records.

Q. In other words, you didn't keep track except by hours on the place? A. Yes.

Q. But that was on the Neely farm at Maricopa?

A. Yes, sir.

Q. And during that period of time, you have levelled on all four sections? A. Yes.

Q. But you don't know when you levelled on either one of those sections, and yet you did the work?

A. Well, I don't know when we levelled the west half. I know the east half of the section was the last two pieces of ground we worked on.

But I am in question on these two here (indicating).

Q. You don't know when? [537]

A. No, I can't tell.

Q. That leveling was done prior to, sometime in 1954, prior to February 19 when you billed him, is that right? A. Yes, sir.

Mr. Whitney: That is all.

Mr. Holohan: We have no questions.

Mr. Whitney: That is all, Mr. Patterson. May he be excused?

The Court: Yes.

(Witness excused.)

Mr. Whitney: The Defendant Neely rests.

Mr. Hays: Nothing more, your Honor.

Mr. Whitney: I would like to make a motion, if the Court please.

The Court: All right. The Court will stand at recess for a few minutes.

(The Jury retired from the courtroom. The following proceedings were had out of the hearing and presence of the Jury.)

The Court: All right.

Mr. Whitney: The Defendant Neely now at the close of all the evidence moves the Court for a judgment of acquittal on each and every count in the indictment.

In this connection, it adopts the argument made at the close of the Government's case, and particularly [538] wishes to call the Court's attention to Paragraphs VII to XI, inclusive, in which Mr. Neely is charged with aiding and abetting Short, on the theory that there is not a scintilla of evidence in the record that justifies a verdict of guilty on those counts.

And the same may be said of Count XII, the conspiracy count.

The Court: I will deny your motion.

(Recess.)

(After which Counsel for the Government and Counsel for the Defendants argued the case to the Jury.)

The Court: The Court will stand at recess until ten o'clock in the morning.

(Thereupon an adjournment was taken to Friday, September 19, 1958, at the hour of ten o'clock a.m.) [539]

Friday, September 19, 1958

Ten O'Clock A.M.

Court convened pursuant to adjournment.

Present: Same as before.

Court's Instructions to the Jury

The Court: It now becomes the duty of the Court to instruct you as to the law that applies to this case.

You have heard the Indictment read several times, so I will only refer to it briefly now.

Count I charges that on or about April 5th, 1954, in this District, the defendant Rex L. Neely, well knowing Joe L. Short to be an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and in such capacity charged with the duty of proper administration of the cotton acreage allotment and marketing quota program of the United States as the defendant well knew, did wilfully and unlawfully tender to the said Joe L. Short a check in the amount of \$1,620, dated April 5, 1954, drawn on the Valley National Bank, [540] Mesa, Arizona, signed by the defendant as drawer, and payable to the order of Joe Short, with intent to influence the said Joe L. Short, to act in his aforesaid official capacity in committing and allowing the commission of a fraud against the United States, to-wit: the procuring of a cotton allotment for the defendant in excess of that to which the defendant was lawfully entitled under the cotton acreage allotment and marketing quota program of the United States.

Now, that only charges Neely alone with an offense.

Count II charges that on or about April 5, 1954, within the District of Arizona, "the defendant Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and charged with the duty of administering the cotton acreage allotment and marketing quota program of the United States, did, with intent to have his actions influenced in a matter before him in his official capacity, to-wit: the procuring of an additional cotton acreage allotment for Rex L. Neely, wilfully and unlawfully accept from Rex L. Neely a check in the amount of \$1,620, dated April 5, 1954, drawn on the Valley National Bank, Mesa, Arizona, signed by the said Neely as drawer, and payable to the order of Joe Short."

That count only charges Short with an offense, the acceptance of a bribe.

Count III is the same as Count I, except the amounts are different, and the date also is different, and the amount of the check is different.

Count IV charges Short with the receiving of this check for \$1410.

Count V charges the same, only the check involved in this count is \$1750.

Count VI charges Short with receiving this \$1750.

Count VII charges a different offense.

It charges: "On or about the 19th day of March, 1954, Joe L. Short, being then and there an employee of the Pinal County Agricultural Stabiliza-

tion and Conservation Committee, an agency of the United States, and being charged with the duty of keeping accounts and records of said agency, did within the District of Arizona, unlawfully, knowingly and feloniously, with intent to deceive, mislead, injure and defraud the United States and persons to the Grand Jury unknown, make and cause to be made a false and fictitious entry on the official listing sheets of the Pinal County Agricultural Stabilization and Conservation Committee Office for the 1954 cotton crop year, a record relating to and connected with his duties, by indicating thereon 400.8 acres of cotton allotment acreage apportioned to [542] Farm 647, well knowing said entry to be false."

The second paragraph charged that "the defendant Rex L. Neely did unlawfully aid, abet and induce the defendant Joe L. Short in the commission of the acts charged in paragraph One of this count."

Count VIII also charges the making of false entries by Short, aided and abetted by Neely.

Count IX charges the same.

Count X also charges a like offense.

Count XI charges a like offense.

Count XII is what is known as a Conspiracy count.

It charges that:

"Commencing on or about the 15th day of September, 1953, and continuing thereafter to on or about the 28th day of December, 1956, the defendants, Rex L. Neely, hereinafter referred to as Neely, and Joe L. Short, hereinafter referred to

as Short, did within the District of Arizona unlawfully, wilfully and knowingly conspire together to defraud the United States in the exercise of its governmental functions of administering the cotton acreage allotment and marketing quota program and other agricultural programs free from bribery, improper influence, dishonesty, unlawful impairment, fraud and corruption, and in its right and interest in the conscientious, honest and faithful service, [543] judgment, determination and action of the defendant Short, as a duly appointed employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, free from bribery, corruption, improper influence, dishonesty, bias, hope of unlawful reward and fraud.

"2. During the existence of the conspiracy and at all times mentioned herein, the defendant Neely was a farmer engaged in the occupation of raising, among other things, crops of cotton.

"3. During the existence of the conspiracy and at all times mentioned herein the defendant Short was employed by the Department of Agriculture in the Pinal County Agricultural Stabilization and Conservation Committee Office as office manager.

"4. It was a part of the conspiracy that the defendant Short should contrive to secure for the defendant Neely a cotton allotment from the Agricultural Stabilization and Conservation Committee in Pinal County far in excess of the allotment to which Neely was lawfully entitled under the cotton support program, thereby enabling the defendant

Neely to market the excess cotton without penalty.

"5. It was a further part of the conspiracy that Short should share in the illegal benefits accruing [544] to Neely by receiving payments in money from Neely on a per acre basis.

"6. It was a further part of the conspiracy that Short should alter, change, and falsify the records of the Agricultural Stabilization and Conservation Committee Office to provide additional cotton allotment acreage for Neely and to prevent the discovery or disclosure of the illegal activity.

"7. It was a further part of the conspiracy that Neely should apply for and Short should process requests for Agriculture Conservation Program payments from Department of Agriculture to which Neely was not entitled; and that such payments should be substantiated by the presentation of false documents and fraudulent misrepresentations to said department by Short."

Then there are several overt acts alleged.

"For the purpose of carrying out the said conspiracy and to effect the objectives and purposes thereof, the defendants did and committed the following overt acts:

"(1) On or about March 19, 1954, Short altered the amount of Neely's 1954 acreage cotton allotment on the official listing sheet of the Pinal County Agricultural Stabilization and Conservation Committee Office by lining out the figures 319.8 and inserting above it the figures 400.8.

"(2) On or about March 30, 1954, Short signed the fictitious name, W. R. Burns, to a lease, by

which 160 acres of land having the same legal description as Farm 595 was leased to Neely.

“(3) On or about April 15, 1954, Neely issued a check payable to Short for \$1,620.

“(4) On or about November 22, 1954, Neely issued a check payable to Short for \$1,410.

“(5) On or about August 18, 1955, Neely signed his Form 578, an official form of the aforesaid office, which showed 426.5 acres of planted short staple cotton and none destroyed, and at the same time accepted his marketing card and signed it, on which marketing card was shown that his allotment was 306.1 acres and that his planted acreage was 306.1.

“(6) On or about December 9, 1955, Neely issued to Short a check for \$1,750.

“(7) On or about October 3, 1956, Neely signed his Form 578, an official form of the aforesaid office for short staple cotton, showing his planted acreage as 477.7 and at the same time accepted his short staple marketing card which showed his planted acreage as 306.7.

“(8) On or about December 1, 1956, Short [546] instructed H. L. Mathis to make up a new Notice of Allotment showing that Neely had an acreage allotment of 367.7 acres.

“(9) On or about August or September, 1954, Neely requested Agriculture Conservation Program assistance for a ditch lining practice indicating that construction of the ditch would be commenced by Neely in September.

“(10) On or about September 27, 1954, Neely

made application for payment in the amount of \$1,500."

You may have this indictment in the Jury room with you.

Now, the Federal statutes under which the indictment was drawn read as follows:

"Whoever promises, offers, or gives any money or thing of value, or makes or tenders any for the order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value to any officer or employee or person acting for, or on behalf of the United States, or any department or agency thereof in any official function under or by authority of any such department or agency, or to any officer or person acting for or on behalf of either House of Congress, or of any Committee of either house, or [547] both houses thereof, with intent to influence his decision or action on any question, matter, cause or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow any fraud, or make opportunity for the commission of any fraud on the United States, or to induce him to do or omit to do any act in violation of his lawful duty * * * shall be punished as the act provides."

Now, this is the Acceptance—The one I just read has to do with Bribery. Now this is the acceptance of a bribe; 18 U.S.C., 202.

“Acceptance or solicitation by officer or other person. Whoever, being an officer or employee of, or person acting for or on behalf of the United States, in any official capacity, under or by virtue of the authority of any department or agency thereof, or an officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, asks, accepts or receives any money, or any check, order, contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance [548] of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as the Act provides.”

The next section has to do with false entries.

“False entries and Reports of Money or Security. Whoever being an officer, clerk, agent, or other employee of the United States or any of its agencies charged with the duty of keeping accounts or records of any kind, with intent to deceive, mislead, injure or defraud, makes in any such accounts or records any false or fictitious entry or record of any matter relating to or connected with his duties, shall be punished as the Act provides.”

The next Section of the Code defines Conspiracy. That is the last Count of the Indictment.

“Conspiracy to Commit Offense or to Defraud the United States. If two or more persons conspire

either to commit any offense against the United States or to defraud the United States, or any agency thereof, in any manner, or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be punished as the Statute provides.”

A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. Thus a conspiracy is a kind of partnership in criminal purposes in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to violate or disregard the law.

Mere similarity of conduct among various persons and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be achieved. What the evidence must show in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

It is not necessary for the prosecution to prove that all the means or methods set forth in the [550] indictment were agreed upon to carry out the conspiracy, or that all such means or methods were actually used or put into operation. But it is necessary that the evidence establish to the satisfaction of the jury that one or more of the means or methods described in the indictment was agreed upon to be used in an effort to effect or accomplish some object or purpose of the conspiracy as charged in the indictment.

In order to establish the offense of conspiracy charged in the indictment, the evidence must show beyond a reasonable doubt, first, that the conspiracy described was formed and existing at or about the time alleged; second, that the accused knowingly and willfully became a member of the conspiracy.

Third, that one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment, at or about the time and place alleged; and, fourth, that such overt act was committed in furtherance of some object or purpose of the conspiracy as charged.

If you find from the evidence beyond a reasonable doubt that existence of the conspiracy charged in the indictment has been proved, and that during the existence of the conspiracy one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy as charged, proof of the conspiracy offense charged is then complete; and it is [551]

complete as to every person found by you to have been knowingly and willfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

In a case where two or more persons are charged with the commission of a crime, the guilt of the accused may be established without proof that all the defendants did every act constituting the offense.

“Whoever commits an offense against the United States, or willfully aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

“Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.”

Every person who thus willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and purposely and with specific intent to do what the law forbids, or with specific intent to fail to do what the law requires; that is to say, with evil motive or bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime it is necessary that a defendant willfully associate himself in some way with the criminal venture; and that he willfully participate in it as in something he wishes to [552] bring about; and

that he willfully seek by some action of his to make it succeed.

To conspire to defraud the United States means to cheat the government out of property or money, or to interfere with or obstruct one of its lawful governmental functions by deceit, craft or trickery, or at least by means that are dishonest. It is not necessary that the government shall be subjected to property or pecuniary loss by the fraud, but only that its legitimate official action and purpose shall be defeated by misrepresentation or the over-reaching of those charged with carrying out the governmental intention.

In the 1954 Agricultural Conservation program referred to in this subject as the 1954 Program, administered by the Department of Agriculture, the Federal Government will share with farmers and ranchers the cost of carrying out approved conservation practices in accordance with the provisions contained in this sub-part, with such modifications thereof as may be hereafter made. The approved practices will be deemed to have been carried out during the program year started after the beginning of the program year if the County Committee determines that they are substantially completed by the end of the program year.

However, no practice will be eligible for federal cost sharing until it has been completed in accordance with [553] all applicable specifications of the Program's provisions.

The provisions of the Program contained in this sub-part are applicable to the continent of the

United States. The cost will be shared with the farmer or rancher only on satisfactorily performed conservation practices, for which Federal cost sharing was requested by the farmer or rancher for the conservation work as begun. Federal cost shared is limited to \$1500. (a) The total of all Federal costs shared under the 1954 program to any person with respect to farms, ranching units, and turpentine places in the United States, including Alaska, Hawaii, Porto Rico, and the Virgin Islands, shall not exceed the sum of \$1500.

In a criminal case the defendant is not required to produce evidence or to disprove the facts necessary to establish the crime or to establish his innocence. A defendant is presumed to be innocent at all stages of the trial, and to overcome this legal presumption, the evidence must be clear and convincing and sufficiently strong to convince you beyond a reasonable doubt that the defendant did commit the offense charged.

Every defendant under the law is presumed to be innocent and that presumption is by law evidence in his favor, and this presumption of innocence is an instrument of proof in his favor and remains with him during your deliberations until it is overcome by evidence that is clear [554] and sufficiently strong to convince you beyond a reasonable doubt that he is guilty of the precise crime he is charged with.

I charge you that you may not and must not draw any inference whatsoever as to the guilt of a defendant from the fact that such defendant was

indicted, or from the indictment itself, and that fact must not in any wise enter into your deliberations, as these matters are purely and simply the means and methods of bringing a defendant to trial.

In this case, you must decide separately the questions of the innocence or guilt of each of the two defendants. If you cannot agree upon the innocence or guilt of both the defendants, but do agree as to the innocence or guilt of one of them, you must render a verdict as to the one upon whose innocence or guilt you do agree.

In connection with each of the Counts in the Indictment in which defendant Neely is charged, circumstantial evidence is relied upon to establish certain indispensable elements of the alleged crimes. I charge you that in the case of circumstantial evidence the law requires that such proof must be such as to exclude every reasonable hypothesis consistent with innocence. If from this circumstantial evidence, there may be drawn one inference consistent with innocence and another inference consistent with guilt, I [555] charge you that you must accept the inference consistent with innocence. Facts which merely give rise to a reasonable and just inference that the defendant Neely did commit the crimes charged, do not necessarily exclude every other reasonable inference or hypothesis. If the evidence can be reconciled either with guilt as well as with innocence, then the law requires that a defendant in such a case be given the benefit of the doubt, and you must acquit him. Before you are warranted in convicting the defendant, the facts

proved must be consistent with and point to guilt only, and must be inconsistent with innocence. It is not sufficient that the circumstances coincide with, account for, and therefore render probable the guilt of the defendant; they must exclude every other reasonable hypothesis, except that of the defendant's guilt, and, unless they do so beyond a reasonable doubt, you must find the defendant not guilty.

Evidence of reputation of the defendant's good character has been received in evidence. This evidence of good character is a fact that it is your duty to consider along with other facts in the case, and I charge you that the fact of good character is a fact which, when considered in connection with all other evidence in the case, may, like other facts, generate a reasonable doubt.

I charge you that a specific criminal intent connoted by the word "wilfully" cannot be imputed to one [556] defendant merely because you may believe that the other defendant had a specific criminal intent. The fact, if it is a fact, that one defendant had a specific criminal intent is no evidence or proof in and of itself that the other defendant had a specific criminal intent.

In Counts 7, 8, 9, 10 and 11 of the Indictment, the defendant Joe L. Short is charged with being an employee of the Pinal County Agricultural Stabilization and Conservation Committee, an agency of the United States, and charged with the duty of keeping accounts and records of said agency. It is charged in those counts that said de-

fendant Joe L. Short unlawfully, knowingly and feloniously did make certain entries in the books and records of the Pinal County Agricultural Stabilization and Conservation Committee well knowing said entries to be false. In this connection, I charge you that the defendant Rex L. Neely is not and was not, during the times mentioned in said Counts, an employee or officer of said Pinal County Agricultural Stabilization and Conservation Committee, and did not make any entries in the books and records of said committee. However, in the Counts mentioned herein, the defendant Rex L. Neely is charged with unlawfully aiding, abetting and inducing the defendant Joe L. Short in the commission of the acts charged to Short in said Counts.

I charge you further that one who does not [557] actively commit the offense but who knowingly aids, promotes or encourages its commission either by act or counsel or both, is deemed in law to be an aider or abettor, but shall not be found guilty of the crime unless he did what he did knowingly and with criminal intent. To abet another in the commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting or aiding the commission of such criminal offense.

In Counts 1, 3, and 5 of the Indictment, the defendant Rex L. Neely is charged with unlawfully tendering to the defendant Joe L. Short the amounts of money set forth in each of the respective Counts with the intent to influence said Joe L. Short to act in his official capacity in committing

and allowing the commission of a fraud against the United States, to-wit, the procuring of a cotton allotment for the defendant Neely in excess of that to which the defendant Neely was lawfully entitled under the Cotton Acreage Allotment and Marketing Quota Program of the United States.

In the alternate Counts, 2, 4, and 6, Joe L. Short is charged with accepting the sums of money tendered by Rex L. Neely with the intent to have his acts influenced in the procuring of a cotton allotment for the defendant Neely in excess of that to which the defendant Neely was lawfully entitled under the Cotton Acreage Allotment and Marketing Quota Program of the United States. You are [558] instructed that Neely is not charged in the alternate Counts, 2, 4, and 6, with any crime.

In reference to Counts 1, 3, and 5, the defendant Neely cannot be convicted unless you find beyond a reasonable doubt that at the time claimed by the United States the money was given by Neely with the corrupt intention on his part of corrupting Joe L. Short and influencing his official action in procuring an additional fraudulent cotton allotment for Neely. You are instructed, and I so charge you, that the procurement by Joe L. Short, in his official capacity, of an additional fraudulent cotton allotment for Neely does not in itself prove that Neely is guilty as charged in these particular Counts. You must find beyond a reasonable doubt from all of the evidence that Neely tendered the amounts of money alleged with the intention and for the deliberate and express purpose of influenc-

ing Joe L. Short to secure for him an additional fraudulent cotton allotment.

The fact that Neely purchased and procured, or had an additional cotton allotment or planted cotton in excess of his official allotment does not of itself prove a violation of any criminal law by Neely. I instruct you that it was not against the law for the defendant Neely to lease land with a cotton allotment or secure additional cotton allotment or allotments. [559]

If you believe from all of the evidence that Neely believed and relied upon the representations made to him by Joe L. Short in reference to the additional cotton allotment, and you further believe from the evidence that Neely tendered the amounts of money set forth in said charges honestly and in good faith believing that he was leasing the Burns farm and thereby securing a bona fide additional cotton allotment, and further believe from the evidence that Neely did not tender said money, or any part of it, to Short for the purpose and with the intent of corrupting and influencing Short in his official capacity, then you must find the defendant Neely not guilty as to Counts 1, 3, and 5.

I instruct you that the overplanting of a cotton allotment in itself was not a crime. I instruct you further that in the event you find from all of the evidence that Rex L. Neely did in the years 1954, 1955 and 1956 overplant, that is, plant more acres of cotton than was permitted under his allotment, that that fact in itself was not a crime. Under the law and rules and regulations anyone who over-

planted his cotton allotment was required, upon receiving notice of the acreage overplanted from the County Committee, to either plow up and destroy and the amount of acres or fractions of acres determined to be overplanted, or to pay the United States Government, within the time allowed, and after receiving said notice, the prescribed penalty for the acreage overplanted. [560]

In connection with the conspiracy indictment, it is necessary that you keep in mind exactly what the alleged agreement between the alleged conspirators was, for the defendants are not charged with, nor can they be convicted of, having entered into and knowingly participated in furthering some other or different agreement. I charge you that the burden is upon the prosecution to prove beyond a reasonable doubt that the particular agreement alleged did exist and was the precise one alleged by the prosecution. If, after considering the whole of the evidence, you are in doubt whether the precise agreement alleged did exist, then I charge you that you must return a verdict of not guilty as to the alleged conspiracy.

Evidence received during the trial because applicable to one or more of the defendants is not thereby proof of the existence of a conspiracy. No one can be made a conspirator by declarations or acts of someone else, but only by his own acts.

I charge you that the evidence must show beyond a reasonable doubt that the defendant Neely knowingly joined in the conspiracy alleged in the indictment, before you may find him guilty of the crime charged, and even if the defendant Neely committed

one or more of the overt acts alleged in the indictment, he does not thereby violate the [561] Conspiracy Statute, unless the evidence shows that beyond a reasonable doubt he joined in the specific conspiracy alleged in the indictment.

An admission or incriminatory statement made outside of court by one person may not be considered as evidence against any person who was not present and heard the statement made.

In every crime there must exist a union or joint operation of act and intent. The burden is always upon the prosecution to prove both act and intent beyond a reasonable doubt.

Now by the finding of the indictment in this case no presumption whatsoever arises to indicate that a defendant is guilty, or that he has had any connection with or responsibility for the acts charged against him. The defendant is presumed to be innocent at all stages of the proceedings until the evidence introduced on behalf of the Government shows him to be guilty beyond a reasonable doubt, and this rule applies to every material element of the offense charged. Mere suspicion will not authorize a conviction.

A reasonable doubt is such a doubt as you may have in your minds when after fairly and impartially considering all of the evidence, you do not feel satisfied to a moral certainty of the defendant's guilt.

In order that the evidence submitted shall afford [562] proof beyond a reasonable doubt, it must be such as you would be willing to act upon in the

most important and vital matters relating to your own affairs.

Reasonable doubt is not a mere possible or imaginary doubt, or a bare conjecture, for it is difficult to prove a thing to an absolute certainty. You are to consider the strong probabilities of the case. A conviction is justified only when such probabilities exclude all reasonable doubt as the same has been defined to you.

Without its being restated or repeated, you are to understand that the requirements that a defendant's guilt be shown beyond a reasonable doubt is to be considered in connection with and as accompanying all the instructions that are given you.

In judging of the evidence, you are to give it a reasonable and fair construction, and you are not authorized because of any feeling of sympathy or other bias to apply a strained construction, one that is unreasonable, in order to justify a certain verdict, when, were it not for such feeling or bias, you would reach a contrary conclusion, and whenever after a careful consideration of all the evidence your minds are in that state where a conclusion of innocence is indicated equally with a conclusion of guilt, or there is a reasonable doubt as to whether the evidence is so balanced that a conclusion of innocence must be adopted. [563]

You are the sole judges of the credibility and the weight which is to be given to the different witnesses who have testified upon the trial. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which

he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, and integrity, or his motives, or by contradictory evidence.

In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or you may disbelieve the whole, or any part of it, as may be dictated by your judgment as reasonable persons.

You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relation which he bears to the Government or the Defendant, and the manner in which he might be affected by the verdict, and the extent to which he is contradicted or corroborated by other evidence, if at all, in every matter that tends reasonably to shed light upon his credibility.

If a witness is shown knowingly to have testified falsely on the trial touching any material matter, the [564] jury should distrust his testimony in other particulars, and in that case you are at liberty to reject the whole of the witness's testimony. You are not limited in your consideration of the evidence to the bald expression of the witnesses. You are authorized to draw such inferences from the facts and circumstances which you find have been proved as seem justified in the light of your experience as reasonable persons.

There is nothing peculiarly different from the way a jury is to consider the proof in a criminal

case, and that by which men give their attention to any question depending upon evidence presented to them.

You are expected to use your good sense, consider the evidence for the purposes only for which it has been admitted, and in the light of your knowledge of the natural tendencies and propensities of human beings, resolve the facts according to deliberate and cautious judgment.

While remembering that the defendants are entitled to any reasonable doubt that may remain in your minds, remember as well that if no such doubt remains, the Government is entitled to a verdict.

Jurors are expected to agree upon a verdict if they can conscientiously do so. You are expected to consult with one another in the Jury room, and any juror should not hesitate to abandon his own view when convinced that it is erroneous.

In determining what your verdict should be, you are to consider only the evidence before you. Any testimony as to which an objection was sustained, and any testimony which was ordered stricken out must be wholly left out of account and disregarded.

The opinion of the Judge as to the guilt or innocence of the defendant, if directly or inferentially expressed in these instructions, or at any time during the trial, is not binding upon the jury, for to the jury exclusively belongs the duty of determining the facts. The law you must accept from the Court as correctly declared in these instructions.

Have I omitted anything, gentlemen?

Mr. Hays: No, your Honor.

Mr. Stanfield: No, your Honor.

Mr. Whitney: No, sir.

The Court: The Jury will retire from the Court room for a few minutes.

(Thereupon the Jury retired from the court-room, and the following proceedings were had out of the hearing and presence of the Jury.)

The Court: All right, gentlemen, if you have any objections or exceptions.

Mr. Whitney: If the Court pleases, in connection with [566] the Government's Instruction No. 3, the defendant Neely objects to the giving of such instruction on the grounds that it is not the law in this case, that under the particular statute and section, 2073, 18 U.S.C., covering Counts 7 to 11, inclusive, in the Indictment, the defendant Neely could not commit the substantive offense charged against Short, because the Statute is directed against an officer, agent, or employee of the United States, or any of its agencies, and Neely could not be a principal.

Neely is charged in the Indictment separately with unlawfully aiding and inducing Short in the commission of the acts charged, and while the acts charged against Neely, if proven, may be punished as a conspiracy, he can only be charged with reference to aiding, abetting, and inducing defendant Short.

The defendant Neely objects to the giving of the Government's Instruction No. 5, which is apparently directed against Short, isn't it, Mr. Hays?

Mr. Hays: No. It is conspiracy to defraud, to

cheat the Government out of property, and so forth.

Mr. Whitney: Mr. Neely is not charged with carrying out the Government's intention. He couldn't be.

And the Defendant Neely excepts to the Court's refusal to give Defendant Neely's requested instructions Nos. 3, 8, 9, and 16. [567]

If the Court please, for the record, I object to the taking out of Lines 20, 21, and 22 of Defendant's Instruction Number 12, reading, "In this connection, I charge you that the defendant Rex L. Neely cannot be regarded in law as a principal in the crimes charged in Counts 7, 8, 9, 10 and 11", on the same grounds that I objected to Government's Instruction No. 3.

I believe that is all.

The Court: All right, will you bring in the Jury, Mr. Bailiff.

(Thereupon the Jury returned to the courtroom, and the following proceedings were had in the hearing and presence of the Jury.)

The Court: After you retire to your Jury room, ladies and gentlemen, you will select one of your number to act as foreman, and you will proceed with your deliberations.

Two forms of verdict have been prepared. One is for the defendant Neely, and one for defendant Short. These have been prepared for your guidance. They read as follows; omitting the title of the court and cause:

"We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find the

defendant, Rex L. Neely as charged
in Count I; as charged in Count III;
..... as charged in Count 5;
as charged in Count VII; as charged
in [568] Count VIII;as charged in
Count IX; as charged in Count X;
..... as charged in Count XI;
as charged in Count XII.”

You will insert in those blanks whatever your finding may be, either Guilty or Not Guilty.

Another form of verdict, as I say, has been provided for Joe L. Short.

Any verdict, as you know, must be the unanimous verdict of the Jury, and the guilt or innocence, I believe I have stated that before, of each defendant must be determined separately.

You may retire now in the custody of the Bailiff.

(Thereupon the Jury retired to deliberate upon its verdict.)

The Court: The Court will stand at recess. [569]
[Endorsed]: Filed March 13, 1959.

[Endorsed]: No. 16418. United States Court of Appeals for the Ninth Circuit. Rex L. Neely, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed: March 30, 1959.

Docketed: April 1, 1959.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 16418

REX L. NEELY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS
ON WHICH HE INTENDS TO RELY

Comes Now Appellant, Rex L. Neely, through his attorneys undersigned, and hereby respectfully sets forth the following points upon which he intends to rely in the above-entitled case on appeal:

(1) Count V of the Indictment upon which appellant was convicted fails to state an offense against the United States.

(2) The admission by the court below of evidence, oral and documentary, over the objection that the proper foundation was not laid.

(3) The admission by the court below of evidence, oral and documentary, over the objection that such evidence was irrelevant, incompetent, and immaterial.

(4) Failure of the District Court to enter a judgment of acquittal on appellant's motion at the close of the government's case and at the close of the entire evidence as to Count V of the Indictment on which the appellant was convicted, for the reason that the evidence was and is insufficient upon

which to base a verdict of guilty on said Count V of the Indictment.

Dated: March 30, 1959.

WHITNEY & LaPRADE,
/s/ By LOUIS B. WHITNEY,
Attorneys for Appellant.

Acknowledgment of Service Attached.

[Endorsed]: Filed April 1, 1959. Paul P. O'Brien,
Clerk.

[Title of Court of Appeals and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties to the above-entitled action, acting through their respective attorneys undersigned, that all original exhibits contained in the record on appeal in the above-entitled action may be considered by the above-entitled court in their original form without reproduction in the printed record.

Dated at Phoenix, Arizona, this 27th day of March, 1959.

WHITNEY & LaPRADE,
/s/ By LOUIS B. WHITNEY,
Attorneys for Appellant.

/s/ JACK D. H. HAYS,
United States Attorney for the District of Arizona,
Attorney for Appellee.

[Endorsed]: Filed April 1, 1959. Paul P. O'Brien,
Clerk.